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**CERCLA AS AMENDED BY THE "SUPERFUND REFORM
ACT OF 1994"**

(THE ADMINISTRATION BILL)

MARCH 7, 1994

PREPARED FOR

**U.S. EPA REGION 8 AND THE OFFICE OF EMERGENCY AND
REMEDIAL RESPONSE**



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**CERCLA AS AMENDED BY THE "SUPERFUND REFORM ACT OF 1994"
(THE ADMINISTRATION BILL)**

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* If a section number is not followed by a U.S. Code citation, that is because it would be newly added to CERCLA by the Administration bill.

** Part of this title is in bold and in italics because those words would be newly added by the Administration bill.

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NOTE: This document contains all the CERCLA provisions that would be amended by the Administration bill. Therefore, it includes all of Title I and one section of Title III (*i.e.*, §302). The Administration bill also would add a new Title VIII, which is included in full. This document does not contain any of the revenue amendments found on pages 139-41 of the Administration bill, since they are to be made to the Internal Revenue Code of 1986 and not to CERCLA.

LEGEND

The text of the current CERCLA is printed in regular typeface.

~~[All language that is to be deleted from CERCLA by the Administration bill is contained in brackets, placed in bold type, and has a strike-out line through it.]~~

All language that would be added to CERCLA by the Administration bill is in bold and in italics.

[Specific references to the Superfund Reform Act (SRA) are contained in brackets, placed in bold type, printed in a smaller font, and underlined.]

TITLE I — HAZARDOUS SUBSTANCES RELEASES, LIABILITY, COMPENSATION¹

SEC. 101. For purposes of this title —

(7) The term "drinking water supply" means any raw or finished water source that is or may be used by a public water system (as defined in the Safe Drinking Water Act) or as drinking water by one or more individuals.

³See footnote 2, *supra*.

1 (8) The term "environment" means

2
3 (A) the navigable waters, the waters of the contiguous zone, and the ocean
4 waters of which the natural resources are under the exclusive management
5 authority of the United States under the Magnuson Fishery Conservation
6 and Management Act, and

7
8 (B) any other surface water, ground water, drinking water supply, land
9 surface or subsurface strata, or ambient air within the United States or
10 under the jurisdiction of the United States.

11
12 (9) The term "facility" means

13
14 (A) any building, structure, installation, equipment, pipe or pipeline
15 (including any pipe into a sewer or publicly owned treatment works), well,
16 pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor
17 vehicle, rolling stock, or aircraft, or

18
19 (B) any site or area where a hazardous substance has been deposited,
20 stored, disposed of, or placed, or otherwise come to be located; but does
21 not include any consumer product in consumer use or any vessel.

22
23 (10) The term "federally permitted release" means

24
25 (A) discharges in compliance with a permit under section 402 of the
26 Federal Water Pollution Control Act,

27
28 (B) discharges resulting from circumstances identified and reviewed and
29 made part of the public record with respect to a permit issued or modified
30 under section 402 of the Federal Water Pollution Control Act and subject
31 to a condition of such permit,

32
33 (C) continuous or anticipated intermittent discharges from a point source,
34 identified in a permit or permit application under section 402 of the
35 Federal Water Pollution Control Act, which are caused by events occurring
36 within the scope of relevant operating or treatment systems,

37
38 (D) discharges in compliance with a legally enforceable permit under
39 section 404 of the Federal Water Pollution Control Act

40
41 (E) releases in compliance with a legally enforceable final permit issued
42 pursuant to section 3005(a) through (d) of the Solid Waste Disposal Act
43 from a hazardous waste treatment, storage, or disposal facility when such

1 permit specifically identifies the hazardous substances and makes such
2 substances subject to a standard of practice, control procedure or bioassay
3 limitation or condition, or other control on the hazardous substances in
4 such releases,

5
6 (F) any release in compliance with a legally enforceable permit issued
7 under section 102 of section 103 of the Marine Protection, Research, and
8 Sanctuaries Act of 1972,

9
10 (G) any injection of fluids authorized under Federal underground injection
11 control programs or State programs submitted for Federal approval (and
12 not disapproved by the Administrator of the Environmental Protection
13 Agency) pursuant to part C of the Safe Drinking Water Act,

14
15 (H) any emission into the air ~~[subject to]~~ *in compliance with* a permit
16 or control regulation under section 111, section 112, title I part C, title I
17 part D, or State implementation plans submitted in accordance with section
18 110 of the Clean Air Act (and not disapproved by the Administrator of the
19 Environmental Protection Agency), including any schedule or waiver
20 granted, promulgated, or approved under these sections, [See SRA §605
21 (b) at page 100]

22
23 (I) any injection of fluids or other materials authorized under applicable
24 State law

25
26 (i) for the purpose of stimulating or treating wells for the production
27 of crude oil, natural gas, or water,

28
29 (ii) for the purpose of secondary, tertiary, or other enhanced
30 recovery of crude oil or natural gas, or

31
32 (iii) which are brought to the surface in conjunction with the
33 production of crude oil or natural gas and which are reinjected,

34
35 (J) the introduction of any pollutant into a publicly owned treatment works
36 when such pollutant is specified in and in compliance with applicable
37 pretreatment standards of section 307(b) or (c) of the Clean Water Act and
38 enforceable requirements in a pretreatment program submitted by a State
39 or municipality for Federal approval under section 402 of such Act, and

40
41 (K) any release of source, special nuclear, or byproduct material, as those
42 terms are defined in the Atomic Energy Act of 1954, in compliance with a

legally enforceable license, permit, regulation, or order issued pursuant to the Atomic Energy Act of 1954.

(11) The term "Fund" or "Trust Fund" means the Hazardous Substance Superfund established by section 9507 of the Internal Revenue Code of 1986.

(12) The term "ground water" means water in a saturated zone or stratum beneath the surface of land or water.

(13) The term "guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this Act.

(14) The term "hazardous substance" means

(A) any substance designated pursuant to section 311(b)(2)(A) of the Federal Water Pollution Control Act,

(B) any element, compound, mixture, solution, or substance designated pursuant to section 102 of this Act,

(C) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress, *unless such waste contains a substance that is listed under any other subparagraph of this paragraph*), [See SRA §605 (c) at page 100]

(D) any toxic pollutant listed under section 307(a) of the Federal Water Pollution Control Act,

(E) any hazardous air pollutant listed under section 112 of the Clean Air Act, and

(F) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act.

The term does not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of this paragraph, and the term does not include natural gas, natural gas liquids,

liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).

(15) The term "navigable waters" or "navigable waters of the United States" means the waters of the United States, including the territorial seas.

(16) The term "natural resources" means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Magnuson Fishery Conservation and Management Act, any State or local government, any foreign government, any Indian tribe, or, if such resources are subject to a trust restriction on alienation, any member of an Indian tribe.

(17) The term "offshore facility" means any facility of any kind located in, on, or under, any of the navigable waters of the United States, and any facility of any kind which is subject to the jurisdiction of the United States and is located in, on, or under any other waters, other than a vessel or a public vessel.

(18) The term "onshore facility" means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land or nonnavigable waters within the United States.

(19) The term "otherwise subject to the jurisdiction of the United States" means subject to the jurisdiction of the United States by virtue of United States citizenship, United States vessel documentation or numbering, or as provided by international agreement to which the United States is a party.

(20) (A) The term "owner or operator" means

(i) in the case of a vessel, any person owning, operating, or chartering by demise, such vessel,

(ii) in the case of an onshore facility or an offshore facility, any person owning or operating such facility, and

(iii) in the case of any facility, title or control of which was conveyed due to bankruptcy, foreclosure, tax delinquency, abandonment, or similar means to *the United States (or any department, agency, or instrumentality thereof)*, or a unit of State or local government, any person who owned, operated, or otherwise controlled activities at such facility immediately beforehand. [See SRA §605(d)(1) at page 100]

Such term does not include a person, who, without participating in the management of a vessel or facility, holds indicia of ownership primarily to protect his security interest in the vessel or facility.

(B) In the case of a hazardous substance which has been accepted for transportation by a common or contract carrier and except as provided in section 107(a)(3) or (4) of this Act,

(i) the term "owner or operator" shall mean such common carrier or other bona fide for hire carrier acting as an independent contractor during such transportation,

(ii) the shipper of such hazardous substance shall not be considered to have caused or contributed to any release during such transportation which resulted solely from circumstances or conditions beyond his control.

(C) In the case of a hazardous substance which has been delivered by a common or contract carrier to a disposal or treatment facility and except as provided in section 107(a)(3) or (4)(i) the term "owner or operator" shall not include such common or contract carrier, and (ii) such common or contract carrier shall not be considered to have caused or contributed to any release at such disposal or treatment facility resulting from circumstances or conditions beyond its control.

(D) The term "owner or operator" does not include *the United States (or any department, agency, or instrumentality thereof)*, or a unit of State or local government which acquired ownership or control involuntarily through bankruptcy, tax delinquency, abandonment, or other circumstances in which the government involuntarily acquires title by virtue of its function as sovereign. The exclusion provided under this paragraph shall not apply to *any department, agency, or instrumentality of the United States*, or any State or local government which has caused or contributed to the release or threatened release of a hazardous substance from the facility; and such [a] *department, agency, or instrumentality of the United States*, or State or local government shall be subject to the provisions of this Act in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity, including liability under section 107. [See SRA §605(d)(2)(A) at page 100]; [See SRA §605(d)(2)(B) at page 101]; [See SRA §605(d)(3) at page 101]

1 (E) The term "owner or operator" shall include a trust or
2 estate, but does not include a person who holds title to a vessel
3 or facility solely in the capacity as a fiduciary, provided that
4 such person —

5 (i) does not participate in the management of a vessel or
6 facility operations that result in a release or threat of
7 release of hazardous substances; and

8
9 (ii) complies with such other requirements as the
10 Administrator may set forth by regulation.

11
12 (F) The term "owner or operator" shall not include the United
13 States or any department, agency or instrumentality of the
14 United States or a conservator or receiver appointed by a
15 department, agency or instrumentality of the United States,
16 which acquired ownership or control of a vessel or facility (or
17 any right or interest therein) —

18
19 (i) in connection with the exercise of receivership or
20 conservatorship authority or the liquidation or winding up
21 of the affairs of any entity subject to a receivership or
22 conservatorship, including any subsidiary thereof; or

23
24 (ii) in connection with the exercise of any seizure or
25 forfeiture authority; or

26
27 (iii) pursuant to an act of Congress specifying the property
28 to be acquired,

29
30 provided, that the United States, or conservator or receiver
31 appointed by the United States does not participate in the
32 management of the vessel or facility operations that result in a
33 release or threat of release of hazardous substances and
34 complies with such other requirements as the Administrator may
35 set forth by regulation. [See SRA §605(d)(4) at page 100]

36
37 (21) The term "person" means an individual, firm, corporation, association,
38 partnership, consortium, joint venture, commercial entity, United States
39 Government, State, municipality, commission, political subdivision of a State, or
40 any interstate body.

41
42 (22) The term "release" means any spilling, leaking, pumping, pouring, emitting,
43 emptying, discharging, injecting, escaping, leaching, dumping, or disposing into

1 the environment (including the abandonment or discarding of barrels, containers,
2 and other closed receptacles containing any hazardous substance or pollutant or
3 contaminant), but excludes

4
5 (A) any release which results in exposure to persons solely within a
6 workplace, with respect to a claim which such persons may assert against
7 the employer of such persons,

8
9 (B) emissions from the engine exhaust of a motor vehicle, rolling stock,
10 aircraft, vessel, or pipeline pumping station engine,

11
12 (C) release of source, byproduct, or special nuclear material from a
13 nuclear incident, as those terms are defined in the Atomic Energy Act of
14 1954, if such release is subject to requirements with respect to financial
15 protection established by the Nuclear Regulatory Commission under section
16 170 of such Act, or, for the purposes of section 104 of this title or any
17 other response action, any release of source byproduct, or special nuclear
18 material from any processing site designated under section 102(a)(1) or
19 302(a) of the Uranium Mill Tailings Radiation Control Act of 1978; and
20 (D) the normal application of fertilizer.

21
22 (23) The terms "remove" or "removal" means the cleanup or removal of released
23 hazardous substances from the environment, such actions as may be necessary
24 taken in the event of the threat of release of hazardous substances into the
25 environment, such actions as may be necessary to monitor, assess, and evaluate
26 the release or threat of release of hazardous substances, the disposal of removed
27 material, or the taking of such other actions as may be necessary to prevent,
28 minimize, or mitigate damage to the public health or welfare or to the
29 environment, which may otherwise result from a release or threat of release.
30 The term includes, in addition, without being limited to, security fencing or other
31 measures to limit access, provision of alternative water supplies, temporary
32 evacuation and housing of threatened individuals not otherwise provided for,
33 action taken under section 104(b) of this Act, and any emergency assistance which
34 may be provided under the Disaster Relief Act and Emergency Assistance Act.
35 *"The terms 'remove' or 'removal' are not limited to emergency*
36 *situations and include actions to address future or potential exposures*
37 *and, provided such actions are consistent with the requirements of*
38 *this Act, actions obviating the need for a remedial action. [See SRA*
39 *§605(e) at page 102]*

40
41 (24) The terms "remedy" or "remedial action" means those actions consistent
42 with permanent remedy taken instead of or in addition to removal actions in the
43 event of a release or threatened release of a hazardous substance into the

1 environment, to prevent or minimize the release of hazardous substances so that
2 they do not migrate to cause substantial danger to present or future public health
3 or welfare or the environment. The term includes, but is not limited to, such
4 actions at the location of the release as storage, confinement, perimeter protection
5 using dikes, trenches, or ditches, clay cover, neutralization, cleanup of released
6 hazardous substances and associated contaminated materials, recycling or reuse,
7 diversion, destruction, segregation of reactive wastes, dredging or excavations,
8 repair or replacement of leaking containers, collection of leachate and runoff,
9 onsite treatment or incineration, provision of alternative water supplies, and any
10 monitoring reasonably required to assure that such actions protect the public
11 health and welfare and the environment. The term includes the costs of
12 permanent relocation of residents and businesses and community facilities where
13 the President determines that, alone or in combination with other measures, such
14 relocation is more cost-effective than and environmentally preferable to the
15 transportation, storage, treatment, destruction, or secure disposition offsite of
16 hazardous substances, or may otherwise be necessary to protect the public health
17 or welfare; the term includes offsite transport and offsite storage, treatment,
18 destruction, or secure disposition of hazardous substances and associated
19 contaminated materials.

20
21 (25) The terms "respond" or "response" means remove, removal, remedy, and
22 remedial action, all such terms (including the terms "removal" and "remedial
23 action") include enforcement activities ~~[related thereto]~~ *and oversight*
24 *activities related thereto when such activities are undertaken by the*
25 *President. [See SRA §605(f) at page 102]*

26
27 (26) The terms "transport" or "transportation" means the movement of a
28 hazardous substance by any mode, including pipeline (as defined in the Pipeline
29 Safety Act), and in the case of a hazardous substance which has been accepted for
30 transportation by a common or contract carrier, the term "transport" or
31 "transportation" shall include any stoppage in transit which is temporary,
32 incidental to the transportation movement, and at the ordinary operating
33 convenience of a common or contract carrier, and any such stoppage shall be
34 considered as a continuity of movement and not as the storage of a hazardous
35 substance.

36
37 (27) The terms "United States" and "State" include the several States of the United
38 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam,
39 American Samoa, the United States Virgin Islands, the Commonwealth of the
40 Northern Marianas, and any other territory or possession over which the United
41 States has jurisdiction.
42

(28) The term "vessel" means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

(29) The terms "disposal", "hazardous waste", and "treatment" shall have the meaning provided in section 1004 of the Solid Waste Disposal Act[.], *except that the term "hazardous substance" shall be substituted for the term "hazardous waste" in the definition of "disposal" and "treatment."* [See SRA §605(g) at page 102]

(30) The terms "territorial sea" and "contiguous zone" shall have the meaning provided in section 502 of the Federal Water Pollution Control Act.

(31) The term "national contingency plan" means the national contingency plan published under section 311(c) of the Federal Water Pollution Control Act or revised pursuant to section 105 of this Act.

(32) The terms "liable" or "liability" under this title shall be construed to be the standard of liability which obtains under section 311 of the Federal Water Pollution Control Act.

(33) The term "pollutant or contaminant" shall include, but not be limited to, any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring[; ~~except that the~~]. *The* term "pollutant or contaminant" shall not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of paragraph (14) and shall not include natural gas, liquefied natural gas, or synthetic gas of pipeline quality (or mixtures of natural gas and such synthetic gas). [See SRA §605(h) at page 102]

(34) The term "alternative water supplies" includes, but is not limited to, drinking water and household water supplies.

(35) (A) The term "contractual relationship", for the purpose of section 107(b)(3), includes, but is not limited to, land contracts, deeds or other instruments transferring title or possession, unless the real property on which the facility concerned is located was acquired by the defendant after the disposal or placement of the hazardous substance on, in, or at the

1 facility, and one or more of the circumstances described in clause (i), (ii),
2 or (iii) is also established by the defendant by a preponderance of the
3 evidence:

4
5 (i) At the time the defendant acquired the facility the defendant did
6 not know and had no reason to know that any hazardous substance
7 which is the subject of the release or threatened release was disposed
8 of on, in, or at the facility.

9
10 (ii) The defendant is a government entity which acquired the facility
11 by escheat, or through any other involuntary transfer or acquisition,
12 or through the exercise of eminent domain authority by purchase or
13 condemnation.

14
15 (iii) The defendant acquired the facility by inheritance or bequest.

16
17 In addition to establishing the foregoing, the defendant must establish that
18 he has satisfied the requirements of section 107(b)(3)(a) and (b).

19
20 (B) To establish that the defendant had no reason to know, as provided in
21 clause (i) of subparagraph (A) of this paragraph, the defendant must have
22 undertaken, at the time of acquisition, all appropriate inquiry into the
23 previous ownership and uses of the property consistent with good
24 commercial or customary practice in an effort to minimize liability. For
25 purposes of the preceding sentence the court shall take into account any
26 specialized knowledge or experience on the part of the defendant, the
27 relationship of the purchase price to the value of the property if
28 uncontaminated, commonly known or reasonably ascertainable information
29 about the property, the obviousness of the presence or likely presence of
30 contamination at the property, and the ability to detect such contamination
31 by appropriate inspection.

32
33 (C) Nothing in this paragraph or in section 107(b)(3) shall diminish the
34 liability of any previous owner or operator of such facility who would
35 otherwise be liable under this Act. Notwithstanding this paragraph, if the
36 defendant obtained actual knowledge of the release or threatened release of
37 a hazardous substance at such facility when the defendant owned the
38 property and then subsequently transferred ownership of the property to
39 another person without disclosing such knowledge, such defendant shall be
40 treated as liable under section 107(a)(1) and no defense under section
41 107(b)(3) shall be available to such defendant.

(D) Nothing in this paragraph shall affect the liability under this Act of a defendant who, by any act or omission, caused or contributed to the release or threatened release of a hazardous substance which is the subject of the action relating to the facility.

(36) The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village but not including any Alaska Native regional or village corporation, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(37) (A) The term "service station dealer" means any person—

(i) who owns or operates a motor vehicle service station, filling station, garage, or similar retail establishment engaged in the business of selling, repairing, or servicing motor vehicles, where a significant percentage of the gross revenue of the establishment is derived from the fueling, repairing, or servicing of motor vehicles, and

(ii) who accepts for collection, accumulation, and delivery to an oil recycling facility, recycled oil that (I) has been removed from the engine of a light duty motor vehicle or household appliances by the owner of such vehicle or appliances, and (II) is presented, by such owner, to such person for collection, accumulation, and delivery to an oil recycling facility.

(B) For purposes of section 114(c), the term "service station dealer" shall, notwithstanding the provisions of subparagraph (A), include any government agency that establishes a facility solely for the purpose of accepting recycled oil that satisfies the criteria set forth in subclauses (I) and (II) of subparagraph (A)(ii), and, with respect to recycled oil that satisfies the criteria set forth in subclauses (I) and (II), owners or operators of refuse collection services who are compelled by State law to collect, accumulate, and deliver such oil to an oil recycling facility.

(C) The President shall promulgate regulations regarding the determination of what constitutes a significant percentage of the gross revenues of an establishment for purposes of this paragraph.

(38) The term "incineration vessel" means any vessel which carries hazardous substances for the purpose of incineration of such substances, so long as such substances or residues of such substances are on board.

1 **(39) BONA FIDE PROSPECTIVE PURCHASER.** — *The term "bona*
2 *fide prospective purchaser" means a person who acquires ownership*
3 *of a facility after enactment of this provision, and who can establish*
4 *by a preponderance of the evidence that—*

5
6 *(A) all active disposal of hazardous substances at the facility*
7 *occurred before that person acquired the facility;*

8
9 *(B) the person conducted a site audit of the facility in*
10 *accordance with commercially reasonable and generally*
11 *accepted standards and practices. The Administrator shall have*
12 *authority to develop standards by guidance or regulation, or to*
13 *designate standards promulgated or developed by others, that*
14 *satisfy this subparagraph. In the case of property for*
15 *residential or other similar use, a site inspection and title search*
16 *that reveal no basis for further investigation satisfy the*
17 *requirements of this subparagraph;*

18
19 *(C) the person provided all legally required notices with respect*
20 *to the discovery or release of any hazardous substances at the*
21 *facility;*

22
23 *(D) the person exercised due care with respect to hazardous*
24 *substances found at the facility and took reasonably necessary*
25 *steps to address any release or threat of release of hazardous*
26 *substances and to protect human health and the environment.*
27 *The requirements of due care and reasonably necessary steps*
28 *with respect to hazardous substances discovered at the facility*
29 *shall be conclusively established where the person successfully*
30 *completes a response action pursuant to a State voluntary*
31 *response program, as defined in section 127 of this title; and*

32
33 *(E) the person provides full cooperation, assistance, and facility*
34 *access to those responsible for response actions at the facility,*
35 *including the cooperation and access necessary for the*
36 *installation, integrity, operation, and maintenance of any*
37 *complete or partial response action at the facility; and*

38
39 *(F) the person is not affiliated with any other person liable for*
40 *response costs at the facility, through any direct or indirect*
41 *familial relationship, or any contractual, corporate, or financial*
42 *relationship other than that created by the instruments by which*
43 *title to the facility is conveyed or financed.*

1 **(40) FIDUCIARY. —**

2
3 **(A) Except as provided in subparagraph (B), the term**
4 **"fiduciary" means a person who owns or controls property —**

5
6 **(i) as a fiduciary within the meaning of section 3(31) of**
7 **the Employee Retirement Income Security Act of 1974, or**
8 **as a trustee, executor, administrator, custodian, guardian,**
9 **conservator, or receiver acting for the exclusive benefit of**
10 **another person; and**

11
12 **(ii) who has not previously owned or operated the**
13 **property in a non-fiduciary capacity.**

14
15 **(B) The term 'fiduciary' does not include any person described**
16 **in subparagraph (A) —**

17
18 **(i) who acquires ownership or control of property to avoid**
19 **the liability of such person or any other person under this**
20 **Act; or**

21
22 **(ii) who owns or controls property on behalf of or for the**
23 **benefit of a holder of a security interest.**

24
25 **(41) MUNICIPAL SOLID WASTE. — The term 'municipal solid**
26 **waste' means all waste materials generated by households, including**
27 **single and multi-family residences, and hotels and motels. The term**
28 **also includes waste materials generated by commercial, institutional,**
29 **and industrial sources, to the extent such wastes (A) are essentially**
30 **the same as waste normally generated by households or (B) were**
31 **collected and disposed of with other municipal solid waste or sewage**
32 **sludge as part of normal municipal solid waste collection services,**
33 **and, regardless of when generated, would be considered conditionally**
34 **exempt small quantity generator waste under section 3001(d) of the**
35 **Solid Waste Disposal Act (42 U.S.C. 6921(d)). Examples of**
36 **municipal solid waste include food and yard waste, paper, clothing,**
37 **appliances, consumer product packaging, disposable diapers, office**
38 **supplies, cosmetics, glass and metal food containers, elementary or**
39 **secondary school science laboratory waste, and household hazardous**
40 **waste (such as painting, cleaning, gardening, and automotive**
41 **supplies). The term 'municipal solid waste' does not include**
42 **combustion ash generated by resource recovery facilities or**
43 **municipal incinerators, or waste from manufacturing or processing**

1 *(including pollution control) operations not essentially the same as*
2 *waste normally generated by households.*

3
4 **(42) MUNICIPALITY.** — *The term "municipality" means a political*
5 *subdivision of a State, including cities, counties, villages, towns,*
6 *townships, boroughs, parishes, school districts, sanitation districts,*
7 *water districts, and other public entities performing local*
8 *governmental functions. The term also includes a natural person*
9 *acting in the capacity of an official, employee, or agent of a*
10 *municipality in the performance of governmental functions.*

11
12 **(43) QUALIFIED HOUSEHOLD HAZARDOUS WASTE**
13 **COLLECTION PROGRAM.** — *The term "qualified household*
14 *hazardous waste collection program" means a program established by*
15 *an entity of the federal government, a state, municipality, or Indian*
16 *tribe that provides, at a minimum, for semiannual collection of*
17 *household hazardous wastes at accessible, well-publicized collection*
18 *points within the relevant jurisdiction.*

19
20 **(44) SEWAGE SLUDGE.** — *The term "sewage sludge" means solid,*
21 *semisolid, or liquid residue removed during the treatment of*
22 *municipal waste water, domestic sewage, or other waste water at or*
23 *by publicly-owned or federally-owned treatment works.*

24
25 **(45) SITE CHARACTERIZATION.** — *The term "site*
26 *characterization" means an investigation that determines the nature*
27 *and extent of a release or potential release of a hazardous substance,*
28 *pollutant or contaminant, and that includes an on-site evaluation and*
29 *sufficient testing, sampling and other field data gathering activities*
30 *to analyze whether there has been a release or threat of a release of*
31 *a hazardous substance, pollutant or contaminant, and the health and*
32 *environmental risks posed by such a release or threat of release.*
33 *The investigation also may include review of existing information*
34 *(available at the time of the review), an off-site evaluation, or other*
35 *measures as the Administrator deems appropriate.*

36
37 **(46) VOLUNTARY RESPONSE.** — *The term "voluntary response"*
38 *means a response action —*

39
40 *(A) undertaken and financed by a current owner or prospective*
41 *purchaser under a voluntary response program; and*
42

1 *(B) with respect to which the current owner or prospective*
2 *purchaser agrees to pay all State oversight costs. [See SRA §605(i)*
3 *at page 103]*

REPORTABLE QUANTITIES AND ADDITIONAL DESIGNATIONS

SEC. 102.(a) The Administrator shall promulgate and revise as may be appropriate, regulations designating as hazardous substances, in addition to those referred to in section 101(14) of this title, such elements, compounds, mixtures, solutions, and substances which, when released into the environment may present substantial danger to the public health or welfare or the environment, and shall promulgate regulations establishing that quantity of any hazardous substance the release of which shall be reported pursuant to section 103 of this title. The Administrator may determine that one single quantity shall be the reportable quantity for any hazardous substance, regardless of the medium into which the hazardous substance is released. For all hazardous substances for which proposed regulations establishing reportable quantities were published in the Federal Register under this subsection on or before March 1, 1986, the Administrator shall promulgate under this subsection final regulations establishing reportable quantities not later than December 31, 1986. For all hazardous substances for which proposed regulations establishing reportable quantities were not published in the Federal Register under this subsection on or before March 1, 1986, the Administrator shall publish under this subsection proposed regulations establishing reportable quantities not later than December 31, 1986, and promulgate final regulations under this subsection establishing reportable quantities not later than April 30, 1988.

(b) Unless and until superseded by regulations establishing a reportable quantity under subsection (a) of this section for any hazardous substance as defined in section 101(14) of this title, (1) a quantity of one pound, or (2) for those hazardous substances for which reportable quantities have been established pursuant to section 311(b)(4) of the Federal Water Pollution Control Act, such reportable quantity, shall be deemed that quantity, the release of which requires notification pursuant to section 103(a) or (b) of this title.

NOTICES, PENALTIES

SEC. 103.(a) NOTICE TO NATIONAL RESPONSE CENTER UPON RELEASE FROM VESSEL OR OFFSHORE OR ONSHORE FACILITY BY PERSON IN CHARGE; CONVEYANCE OF NOTICE BY CENTER. — Any person in charge of a vessel or an offshore or an onshore facility shall, as soon as he has knowledge of any release (other than a federally permitted release) of a hazardous substance from such vessel or facility in quantities equal to or greater than those determined pursuant to section 102 of this title, immediately notify the National Response Center established under the Clean Water Act of such release. The National Response Center shall convey the notification expeditiously to all appropriate Government agencies, including the Governor of any affected State.

(b) Any person —

(1) in charge of a vessel from which a hazardous substance is released, other than a federally permitted release, into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or

(2) in charge of a vessel from which a hazardous substance is released, other than a federally permitted release, which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson Fishery Conservation and Management Act), and who is otherwise subject to the jurisdiction of the United States at the time of the release, or

(3) in charge of a facility from which a hazardous substance is released, other than a federally permitted release, in a quantity equal to or greater than that determined pursuant to section 102 of this title who fails to notify immediately the appropriate agency of the United States Government as soon as he has knowledge of such release or who submits in such a notification any information which he knows to be false or misleading shall, upon conviction, be fined in accordance with the applicable provisions of title 18 of the United States Code or imprisoned for not more than 3 years (or not more than 5 years in the case of a second or subsequent conviction), or both. Notification received pursuant to this subsection or information obtained by the exploitation of such notification shall not be used against any such person in any criminal case, except a prosecution for perjury or for giving a false statement.

(c) Within one hundred and eighty days after the enactment of this Act, any person who owns or operates or who at the time of disposal owned or operated, or who accepted hazardous substances for transport and selected, a facility at which hazardous substances (as defined in section 101(14)(C) of this title are or have been stored, treated, or disposed of shall, unless such facility has a permit issued under, or has been accorded interim status under, subtitle C of the Solid Waste Disposal Act, notify the Administrator of the Environmental Protection Agency of the existence of such facility, specifying the amount and type of any hazardous substance to be found there, and any known, suspected, or likely releases of such substances from such facility. The Administrator may prescribe in greater detail the manner and form of the notice and the information included. The Administrator shall notify the affected State agency, or any department designated by the Governor to receive such notice, of the existence of such facility. Any person who knowingly fails to notify the Administrator of the existence of any such facility shall, upon conviction, be fined not more than \$10,000, or imprisoned for not more than one year, or both. In addition, any such person who knowingly fails to provide the notice required by this subsection shall not be entitled to any limitation of liability or to any defenses to liability set out in section 107 of this Act: Provided, however, That notification under this subsection is not required for any facility which would be reportable hereunder solely as a result of any stoppage in transit which is temporary, incidental to the transportation movement, or at the ordinary operating convenience of a common or contract carrier, and such stoppage shall be considered as a continuity of movement and not as the storage of a hazardous substance. Notification received pursuant to this subsection or information obtained by the exploitation of such notification shall not be used against any such person in any criminal case, except a prosecution for perjury or for giving a false statement.

(d) (1) The Administrator of the Environmental Protection Agency is authorized to promulgate rules and regulations specifying, with respect to —

(A) the location, title, or condition of a facility, and

(B) the identity, characteristics, quantity, origin, or condition (including containerization and previous treatment) of any hazardous substances contained or deposited in a facility; the records which shall be retained by any person required to provide the notification of a facility set out in subsection (c) of this section. Such specification shall be in accordance with the provisions of this subsection.

(2) Beginning with the date of enactment of this Act, for fifty years thereafter or for fifty years after the date of establishment of a record

(whichever is later), or at any such earlier time as a waiver if obtained under paragraph (3) of this subsection, it shall be unlawful for any such person knowingly to destroy, mutilate, erase, dispose of, conceal, or otherwise render unavailable or unreadable or falsify any records identified in paragraph (1) of this subsection. Any person who violates this paragraph shall, upon conviction, be fined in accordance with the applicable provisions of title 18 of the United States Code or imprisoned for not more than 3 years (or not more than 5 years in the case of a second or subsequent conviction), or both.

(3) At any time prior to the date which occurs fifty years after the date of enactment of this Act, any person identified under paragraph (1) of this subsection may apply to the Administrator of the Environmental Protection Agency for a waiver of the provisions of the first sentence of paragraph (2) of this subsection. The Administrator is authorized to grant such waiver if, in his discretion, such waiver would not unreasonably interfere with the attainment of the purposes and provisions of this Act. The Administrator shall promulgate rules and regulations regarding such a waiver so as to inform parties of the proper application procedure and conditions for approval of such a waiver.

(4) Notwithstanding the provisions of this subsection, the Administrator of the Environmental Protection Agency may in his discretion require any such person to retain any record identified pursuant to paragraph (1) of this subsection for such a time period in excess of the period specified in paragraph (2) of this subsection as the Administrator determines to be necessary to protect the public health or welfare.

(e) This section shall not apply to the application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act or to the handling and storage of such a pesticide product by an agricultural producer.

(f) No notification shall be required under subsection (a) or (b) of this section for any release of a hazardous substance —

(1) which is required to be reported (or specifically exempted from a requirement for reporting) under subtitle C of the Solid Waste Disposal Act or regulations thereunder and which has been reported to the National Response Center, or

1 (2) which is a continuous release, stable in quantity and rate, and is —
2

3 (A) from a facility for which notification has been given under
4 subsection (c) of this section, or
5

6 (B) a release of which notification has been given under subsections
7 (a) and (b) of this section for a period sufficient to establish the
8 continuity, quantity, and regularity of such release:
9

10 *Provided*, That notification in accordance with subsections (a) and (b) of
11 this paragraph shall be given for releases subject to this paragraph
12 annually, or at such time as there is any statistically significant increase in
13 the quantity of any hazardous substance or constituent thereof released,
14 above that previously reported or occurring.

RESPONSE AUTHORITIES

SEC. 104 (a) (1) Whenever (A) any hazardous substance is released or there is a substantial threat of such a release into the environment, or (B) there is a release or substantial threat of release into the environment of any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, the President is authorized to act, consistent with the national contingency plan, to remove or arrange for the removal of, and provide for remedial action relating to such hazardous substance, pollutant, or contaminant at any time (including its removal from any contaminated natural resource), or take any other response measure consistent with the national contingency plan which the President deems necessary to protect the public health or welfare or the environment. When the President determines that such action will be done properly and promptly by the owner or operator of the facility or vessel or by any other responsible party, the President may allow such person to carry out the action, conduct the remedial investigation, or conduct the feasibility study in accordance with section 122. No remedial investigation or feasibility study (RI/FS) shall be authorized except on a determination by the President that the party is qualified to conduct the RI/FS and only if the President contracts with or arranges for a qualified person to assist the President in overseeing and reviewing the conduct of such RI/FS and if the responsible party agrees to reimburse the Fund for any cost incurred by the President under, or in connection with, the oversight contract or arrangement. In no event shall a potentially responsible party be subject to a lesser standard of liability, receive preferential treatment, or in any other way, whether direct or indirect, benefit from any such arrangements as a response action contractor, or as a person hired or retained by such a response action contractor, with respect to the release or facility in question. The President shall give primary attention to those releases which the President deems may present a public health threat.

(2) REMOVAL ACTION. — Any removal action undertaken by the President under this subsection (or by any other person referred to in section 122) should, to the extent the President deems practicable, contribute to the efficient performance of any long term remedial action with respect to the release or threatened release concerned.

(3) LIMITATIONS ON RESPONSE. — The President shall not provide for a removal or remedial action under this section in response to a release or threat of release —

(A) of a naturally occurring substance in its unaltered form, or altered solely through naturally occurring processes or phenomena, from a location where it is naturally found;

(B) from products which are part of the structure of, and result in exposure within, residential buildings or business or community structures; or

(C) into public or private drinking water supplies due to deterioration of the system through ordinary use.

(4) EXCEPTION TO LIMITATIONS. — Notwithstanding paragraph (3) of this subsection, to the extent authorized by this section, the President may respond to any release or threat of release if in the President's discretion, it constitutes a public health or environmental emergency and no other person with the authority and capability to respond to the emergency will do so in a timely manner.

(b) (1) INFORMATION; **ACTIONS**, STUDIES AND INVESTIGATIONS. — Whenever the President is authorized to act pursuant to subsection (a) of this section, or whenever the President has reason to believe that a release has occurred or is about to occur, or that illness, disease, or complaints thereof may be attributable to exposure to a hazardous substance, pollutant, or contaminant and that a release may have occurred or be occurring, he may undertake such investigations, monitoring, surveys, testing, and other information gathering as he may deem necessary or appropriate to identify the existence and extent of the release or threat thereof, the source and nature of the hazardous substances, pollutants or contaminants involved, and the extent of danger to the public health or welfare or to the environment. In addition, the President may undertake such planning, legal, fiscal, economic, engineering, architectural, and other **actions**,⁴ studies or investigations as he may deem necessary or appropriate to plan and direct response actions, ~~[to recover the costs thereof, and]~~ or to enforce the provisions of this Act~~[-]~~ **and shall be entitled to recover the costs thereof. [See SRA §505(a) at page 94]; [See SRA §505(b) at page 94]; [See SRA §505(c) at page 94]**

(2) COORDINATION OF INVESTIGATIONS. — The President shall promptly notify the appropriate Federal and State natural resource trustees of potential damages to natural resources resulting from releases under

⁴Section 505(a) of the Administration bill (page 94) says to place "action," before the word "studies" in CERCLA §104(b)(1). The word "studies" appears twice in that provision so "action," has been inserted twice in this strike-out version.

1 investigation pursuant to this section and shall seek to coordinate the
2 assessments, investigations, and planning under this section with such
3 Federal and State trustees.

- 4
5 (c) (1) Unless (A) the President finds that (i) continued response actions are
6 immediately required to prevent, limit, or mitigate an emergency, (ii)
7 there is an immediate risk to public health or welfare or the environment,
8 and (iii) such assistance will not otherwise be provided on a timely basis, or
9 (B) the President has determined the appropriate remedial actions pursuant
10 to paragraph (2) of this subsection and the State or States in which the
11 source of the release is located have complied with the requirements of
12 paragraph (3) of this subsection, or (C) continued response action is
13 otherwise appropriate and ~~[consistent with the remedial action to be~~
14 ~~taken]~~ *not inconsistent with any remedial action that has been*
15 *selected or is anticipated at the time of the removal action,*
16 obligations from the Fund, other than those authorized by subsection (b) of
17 this section, shall not continue after ~~[\$2,000,000]~~ *\$6,000,000* has been
18 obligated for response actions or ~~[12 months]~~ *three years* has elapsed
19 from the date of initial response to a release or threatened release of
20 hazardous substances. [See SRA §506(a)(3) at page 95]; [See SRA
21 §506(a)(1) at page 95]; [See SRA §506(a)(2) at page 95]

22
23 (2) The President shall consult with the affected State or States before
24 determining any appropriate remedial action to be taken pursuant to the
25 authority granted under subsection (a) of this section.

26
27 (3) *State cost shares for response actions and programs for*
28 *which Superfund funds may be allocated under this section or*
29 *section 127 shall be as follows — [See SRA §204(a) at page 33]*

30
31 ~~[The]~~ (A) *For all remedial actions for which a Record of*
32 *Decision is signed before the date of enactment of the*
33 *Superfund Reform Act of 1994, the President shall not provide*
34 *any remedial actions pursuant to this section unless the State in which*
35 *the release occurs first enters into a contract or cooperative*
36 *agreement with the President providing assurances deemed adequate*
37 *by the President that [See SRA §204(b) at page 33]*

38
39 ~~[(A)]~~ (1) the State will assure all future maintenance of the
40 removal and remedial actions provided for the expected life of
41 such actions as determined by the President;
42

1 ~~[(B)]~~ (2) the State will assure the availability of a hazardous
2 waste disposal facility acceptable to the President and in
3 compliance with the requirements of subtitle C of the Solid
4 Waste Disposal Act for any necessary offsite storage,
5 destruction, treatment, or secure disposition of the hazardous
6 substances; and

7
8 ~~[(C)]~~ (3) the State will pay or assure payment of

9
10 ~~[(i)]~~ (I) 10 per centum of the costs of the remedial
11 action, including all future maintenance, or

12
13 ~~[(ii)]~~ (II) 50 percent (or such greater amount as the
14 President may determine appropriate, taking into
15 account the degree of responsibility of the State or
16 political subdivision for the release) of any sums
17 expended in response to a release at a facility, that was
18 operated by the State or a political subdivision thereof,
19 either directly or through a contractual relationship or
20 otherwise, at the time of any disposal of hazardous
21 substances therein. For the purpose of clause ~~[(ii)]~~ II of
22 this subparagraph, the term "facility" does not include
23 navigable waters or the beds underlying those waters. In
24 the case of remedial action to be taken on land or water
25 held by an Indian tribe, held by the United States in trust
26 for Indians, held by a member of an Indian tribe (if
27 such land or water is subject to a trust restriction on
28 alienation), or otherwise within the borders of an Indian
29 reservation, the requirements of this paragraph for
30 assurances regarding future maintenance and cost-
31 sharing shall not apply, and the President shall provide
32 the assurance required by this paragraph regarding the
33 availability of a hazardous waste disposal facility. ISee
34 SRA §204(c) at page 33]

35
36 *(B) Subject to the provisions of subparagraph (C), for the*
37 *costs of all response actions for which a Record of*
38 *Decision or other decision document is signed after the*
39 *date that is one year after the effective date of final*
40 *regulations promulgated under section 127(a)(3) and*
41 *section 127(b)(3), and for all program or other costs for*
42 *which Fund money may be allocated to the State pursuant*
43 *to this section or section 127, the President shall not*

1 *provide or authorize funding from the Fund unless the*
2 *State first enters into a contract or agreement with the*
3 *President providing assurances deemed adequate by the*
4 *President that the State will pay or assure payment of 15*
5 *per cent of all such costs as required by section 127(d).*
6 *The administrator may provide funding authorized under*
7 *this paragraph for a one-year or other period for all costs*
8 *and facilities in a State; in that event, the State cost share*
9 *requirement set forth above shall apply to all costs*
10 *covered by such period; and [See SRA §204(d) at page 33]*
11

12 *(C) Each State shall have the option of receiving funding*
13 *for all response action costs and program or other costs*
14 *for which funding is authorized under this section or*
15 *section 127 pursuant to either subparagraph (A) or*
16 *subparagraph (B) of this paragraph. The option selected*
17 *by the State shall apply to all contracts and agreements*
18 *signed pursuant to this section or section 127. [See SRA*
19 *§204(e) at page 34]*
20

21 (4) SELECTION OF REMEDIAL ACTION. — The President shall select
22 remedial actions to carry out this section in accordance with section 121 of
23 this Act (relating to cleanup standards).
24

25 (5) STATE CREDITS. — *This paragraph applies only to response*
26 *actions for which a Record of Decision or other decision*
27 *document is signed before the date of enactment of the*
28 *Superfund Reform Act of 1994 and response actions covered by*
29 *a contract or agreement for which a State has selected, pursuant*
30 *to the option provided in section (c)(3)(C) (as added by the*
31 *Superfund Reform Act of 1994), the funding requirements set*
32 *forth in subsection (c)(3)(A) (as amended by Superfund Reform*
33 *Act of 1994. [See SRA §201(b)(1) at page 31]*
34

35 (A) GRANTING OF CREDIT. — The President shall grant a State a
36 credit against the share of the costs, for which it is responsible under
37 paragraph (3) with respect to a facility listed on the National
38 Priorities List under the National Contingency Plan, for amounts
39 expended by a State for remedial action at such facility pursuant to a
40 contract or cooperative agreement with the President. The credit
41 under this paragraph shall be limited to those State expenses which
42 the President determines to be reasonable, documented, direct out-
43 of-pocket expenditures of non-Federal funds.

1 (B) EXPENSES BEFORE LISTING OR AGREEMENT. — The
2 credit under this paragraph shall include expenses for remedial
3 action at a facility incurred before the listing of the facility on the
4 National Priorities List or before a contract or cooperative
5 agreement is entered into under subsection (d) for the facility if —
6

7 (i) after such expenses are incurred the facility is listed on
8 such list and a contract or cooperative agreement is entered
9 into for the facility, and
10

11 (ii) the President determines that such expenses would have
12 been credited to the State under subparagraph (A) had the
13 expenditures been made after listing of the facility on such list
14 and after the date on which such contract or cooperative
15 agreement is entered into.
16

17 (C) RESPONSE ACTIONS BETWEEN 1978 AND 1980. — The
18 credit under this paragraph shall include funds expended or obligated
19 by the State or a political subdivision thereof after January 1, 1978,
20 and before December 11, 1980, for cost-eligible response actions and
21 claims for damages compensable under section 111.
22

23 (D) STATE EXPENSES AFTER DECEMBER 11, 1980, IN
24 EXCESS OF 10 PERCENT OF COSTS. — The credit under this
25 paragraph shall include 90 percent of State expenses incurred at a
26 facility owned, but not operated, by such State or by a political
27 subdivision thereof. Such credit applies only to expenses incurred
28 pursuant to a contract or cooperative agreement under subsection (d)
29 and only to expenses incurred after December 11, 1980, but before
30 the date of the enactment of this paragraph.
31

32 (E) ITEM-BY-ITEM APPROVAL. — In the case of expenditures
33 made after the date of the enactment of this paragraph, the President
34 may require prior approval of each item of expenditure as a
35 condition of granting a credit under this paragraph.
36

37 (F) USE OF CREDITS. — Credits granted under this paragraph for
38 funds expended with respect to a facility may be used by the State to
39 reduce all or part of the share of costs otherwise required to be paid
40 by the State under paragraph (3) in connection with remedial actions
41 at such facility. If the amount of funds for which credit is allowed
42 under this paragraph exceeds such share of costs for such facility, the
43 State may use the amount of such excess to reduce all or part of the

1 share of such costs at other facilities in that State. A credit shall not
2 entitle the State to any direct payment.

3
4 (6) OPERATION AND MAINTENANCE. — For the purposes of
5 paragraph (3) of this subsection, in the case of ground or surface water
6 contamination, completed remedial action includes the completion of
7 treatment or other measures, whether taken onsite or offsite, necessary to
8 restore ground and surface water quality to a level that assures protection
9 of human health and the environment. With respect to such measures, the
10 operation of such measures for a period of up to 10 years after the
11 construction or installation and commencement of operation shall be
12 considered remedial action. Activities required to maintain the
13 effectiveness of such measures following such period or the completion of
14 remedial action, whichever is earlier, shall be considered operation or
15 maintenance.

16
17 (7) LIMITATION ON SOURCE OF FUNDS FOR O&M. — *This*
18 *paragraph applies only to response actions for which a Record*
19 *of Decision or other decision document is signed before the date*
20 *of enactment of the Superfund Reform Act of 1994 and response*
21 *actions covered by a contract or agreement for which a State*
22 *has selected, pursuant to the option provided in subsection*
23 *(c)(3)(C) (as added by the Superfund Reform Act of 1994), the*
24 *funding requirements set forth in subsection (c)(3)(A) (as*
25 *amended by Superfund Reform Act of 1994. During any period*
26 *after the availability of funds received by the Hazardous Substance*
27 *Superfund established under subchapter A of chapter 98 of the Internal*
28 *Revenue Code of 1954 from tax revenues or appropriations from general*
29 *revenues, the Federal share of the payment of the cost of operation or*
30 *maintenance pursuant to paragraph (3)(C)(i) or paragraph (6) of this*
31 *subsection (relating to operation and maintenance) shall be from funds*
32 *received by the Hazardous Substance Superfund from amounts recovered*
33 *on behalf of such fund under this Act. [See SRA §201(b) at page 31]*

34
35 (8) RECONTRACTING. — The President is authorized to undertake or
36 continue whatever interim remedial actions the President determines to be
37 appropriate to reduce risks to public health or the environment where the
38 performance of a complete remedial action requires recontracting because
39 of the discovery of sources, types, or quantities of hazardous substances not
40 known at the time of entry into the original contract. The total cost of
41 interim actions undertaken at a facility pursuant to this paragraph shall not
42 exceed \$2,000,000.

~~[(9) Siting. — Effective 3 years after the enactment of the Superfund Amendments and Reauthorization Act of 1986, the President shall not provide any remedial actions pursuant to this section unless the State in which the release occurs first enters into a contract or cooperative agreement with the President providing assurances deemed adequate by the President that the State will assure the availability of hazardous waste treatment or disposal facilities which —~~

~~(A) have adequate capacity for the destruction, treatment, or secure disposition of all hazardous wastes that are reasonably expected to be generated within the State during the 20-year period following the date of such contract or cooperative agreement and to be disposed of, treated, or destroyed,~~

~~(B) are within the State or outside the State in accordance with an interstate agreement or regional agreement or authority,~~

~~(C) are acceptable to the President, and~~

~~(D) are in compliance with the requirements of subtitle C of the Solid Waste Disposal Act.]~~

(9) SITING — Effective one year after the date of enactment of the Superfund Reform Act of 1994, the President shall not provide any remedial actions pursuant to this section unless the State in which the release occurs submits a report describing its plans for adequate disposal capacity for hazardous wastes, in accordance with guidelines issued by the Administrator. [See SRA §205 at page 34]

- (d) (1) COOPERATIVE AGREEMENTS. — *This paragraph applies only to response actions for which a Record of Decision or other decision document is signed before the date of enactment of the Superfund Reform Act of 1994 and response actions covered by a contract or agreement for which a State has selected, pursuant to the option provided by subsection (c)(3)(C) (as added by the Superfund Reform Act of 1994), the funding requirements set forth in subsection (c)(3)(A) (as amended by the Superfund Reform Act of 1994). [See SRA §201(b)(1) at page 31]*

1 (A) STATE APPLICATIONS. — A State or political subdivision
2 thereof or Indian tribe may apply to the President to carry out
3 actions authorized in this section. If the President determines that
4 the State or political subdivision or Indian tribe has the capability to
5 carry out any or all of such actions in accordance with the criteria
6 and priorities established pursuant to section 105(a)(8) and to carry
7 out related enforcement actions, the President may enter into a
8 contract or cooperative agreement with the State or political
9 subdivision or Indian tribe to carry out such actions. The President
10 shall make a determination regarding such an application within 90
11 days after the President receives the application.

12
13 (B) TERMS AND CONDITIONS. — A contract or cooperative
14 agreement under this paragraph shall be subject to such terms and
15 conditions as the President may prescribe. The contract or
16 cooperative agreement may cover a specific facility or specific
17 facilities.

18
19 (C) REIMBURSEMENTS. — Any State which expended funds
20 during the period beginning September 30, 1985, and ending on the
21 date of the enactment of this subparagraph for response actions at
22 any site included on the National Priorities List and subject to a
23 cooperative agreement under this Act shall be reimbursed for the
24 share of costs of such actions for which the Federal Government is
25 responsible under this Act.

26
27 *(2) This paragraph applies only to response actions for which a*
28 *Record of Decision or other decision document is signed before*
29 *the date of enactment of the Superfund Reform Act of 1994 and*
30 *response actions covered by a contract or agreement for which a*
31 *State has selected, pursuant to the option provided in subsection*
32 *(c)(3)(C) (as added by the Superfund Reform Act of 1994), the*
33 *funding requirements set forth in subsection (c)(3)(A) (as*
34 *amended by Superfund Reform Act of 1994). If the President*
35 *enters into a cost-sharing agreement pursuant to subsection (c) of this*
36 *section or a contract or cooperative agreement pursuant to this subsection,*
37 *and the State or political subdivision thereof fails to comply with any*
38 *requirements of the contract, the President may, after providing sixty days*
39 *notice, seek in the appropriate Federal district court to enforce the contract*
40 *or to recover any funds advanced or any costs incurred because of the*
41 *breach of the contract by the State or political subdivision. [See SRA*
42 *§201(b)(1) at page 31]*
43

(3) Where a State or a political subdivision thereof is acting in behalf of the President, the President is authorized to provide technical and legal assistance in the administration and enforcement of any contract or subcontract in connection with response actions assisted under this title, and to intervene in any civil action involving the enforcement of such contract or subcontract.

(4) Where two or more noncontiguous facilities are reasonably related on the basis of geography, or on the basis of the threat, or potential threat to the public health or welfare or the environment, the President may, in his discretion, treat these related facilities as one for purposes of this section.

(e) INFORMATION GATHERING AND ACCESS. —

(1) ACTION AUTHORIZED. — Any officer, employee, or representative of the President, duly designated by the President, is authorized to take action under paragraph (2), (3), or (4) (or any combination thereof) at a vessel, facility, establishment, place, property, or location or, in the case of paragraph (3) or (4), at any vessel, facility, establishment, place, property, or location which is adjacent to the vessel, facility, establishment, place, property, or location referred to in such paragraph (3) or (4). Any duly designated officer, employee, or representative of a State or political subdivision under a contract or cooperative agreement under subsection (d)(1) is also authorized to take such action. The authority of paragraphs (3) and (4) may be exercised only if there is a reasonable basis to believe there may be a release or threat of release of a hazardous substance or pollutant or contaminant. The authority of this subsection may be exercised only for the purposes of determining the need for response, or choosing or taking any response action under this title, or otherwise enforcing the provisions of this title.

(2) ACCESS TO INFORMATION. — Any officer, employee, or representative described in paragraph (1) may require any person who has or may have information relevant to any of the following to furnish, upon reasonable notice, information or documents relating to such matter:

(A) The identification, nature, and quantity of materials which have been or are generated, treated, stored, or disposed of at a vessel or facility or transported to a vessel or facility.

(B) The nature or extent of a release or threatened release of a hazardous substance or pollutant or contaminant at or from a vessel or facility.

1 (C) Information relating to the ability of a person to pay for or to
2 perform a [~~cleanup~~] *response action*.

3
4 (D) *The nature and extent of all activities and operations*
5 *at such vessel or facility, including the identity of any*
6 *persons engaged in, responsible for, controlling, or having*
7 *the ability to control such activities or operations.*

8
9 (E) *Information relating to the liability or responsibility*
10 *of any person to perform or pay for a response action.*

11
12 (F) *Information that is otherwise relevant to enforce the*
13 *provisions of this Act. [See SRA §401(a) at page 44]*
14

15 In addition, upon reasonable notice, such person either (i) shall grant any
16 such officer, employee, or representative access at all reasonable times to
17 any vessel, facility, establishment, place, property, or location to inspect
18 and copy all documents or records relating to such matters or (ii) shall
19 copy and furnish to the officer, employee, or representative all such
20 documents or records, at the option and expense of such person.

21
22 (3) ENTRY. — Any officer, employee, or representative described in
23 paragraph (1) is authorized to enter at reasonable times any of the
24 following:

25
26 (A) Any vessel, facility, establishment, or other place or property
27 where any hazardous substance or pollutant or contaminant may be
28 or has been generated, stored, treated, disposed of, or transported
29 from.

30
31 (B) Any vessel, facility, establishment, or other place or property
32 from which or to which a hazardous substance or pollutant or
33 contaminant has been or may have been released.

34
35 (C) Any vessel, facility, establishment, or other place or property
36 where such release is or may be threatened.

37
38 (D) Any vessel, facility, establishment, or other place or property
39 where entry is needed to determine the need for response or the
40 appropriate response or to effectuate a response action under this
41 title.
42

1 (4) INSPECTION AND SAMPLES. —

2
3 (A) AUTHORITY. — Any officer, employee or representative
4 described in paragraph (1) is authorized to inspect and obtain
5 samples from any vessel, facility, establishment, or other place or
6 property referred to in paragraph (3) or from any location of any
7 suspected hazardous substance or pollutant or contaminant. Any
8 such officer, employee, or representative is authorized to inspect and
9 obtain samples of any containers or labeling for suspected hazardous
10 substances or pollutants or contaminants. Each such inspection shall
11 be completed with reasonable promptness.

12
13 (B) SAMPLES. — If the officer, employee, or representative obtains
14 any samples, before leaving the premises he shall give to the owner,
15 operator, tenant, or other person in charge of the place from which
16 the samples were obtained a receipt describing the sample obtained
17 and, if requested, a portion of each such sample. A copy of the
18 results of any analysis made of such samples shall be furnished
19 promptly to the owner, operator, tenant, or other person in charge,
20 if such person can be located.

21
22 (5) COMPLIANCE ORDERS. —

23
24 (A) ISSUANCE — If consent is not granted regarding any request
25 made by an officer, employee, or representative under paragraph
26 (2), (3), or (4), the President may issue an order directing
27 compliance with the request. The order may be issued after such
28 notice and opportunity for consultation as is reasonably appropriate
29 under the circumstances.

30
31 (B) COMPLIANCE. — The President may ask the Attorney General
32 to commence a civil action to compel compliance with a request or
33 order referred to in subparagraph (A). Where there is a reasonable
34 basis to believe there may be a release or threat of a release of a
35 hazardous substance or pollutant or contaminant, the court shall take
36 the following actions:

37
38 (i) In the case of interference with entry or inspection, the
39 court shall enjoin such interference or direct compliance with
40 orders to prohibit interference with entry or inspection unless
41 under the circumstances of the case the demand for entry or
42 inspection is arbitrary and capricious, an abuse of discretion,
43 or otherwise not in accordance with law.

(ii) In the case of information or document requests or orders, the court shall enjoin interference with such information or document requests or orders or direct compliance with the requests or orders to provide such information or documents unless under the circumstances of the case the demand for information or documents is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law.

The court may assess a civil penalty not to exceed \$25,000 for each day of noncompliance against any person who unreasonably fails to comply with the provisions of paragraph (2), (3), or (4) or an order issued pursuant to subparagraph (A) of this paragraph.

(6) OTHER AUTHORITY. — Nothing in this subsection shall preclude the President from securing access or obtaining information in any other lawful manner.

~~[(7) CONFIDENTIALITY OF INFORMATION. —~~

~~(A) Any records, reports, or information obtained from any person under this section (including records, reports, or information obtained by representatives of the President) shall be available to the public, except that upon a showing satisfactory to the President (or the State, as the case may be) by any person that records, reports, or information, or particular part thereof (other than health or safety effects data), to which the President (or the State, as the case may be) or any officer, employee, or representative has access under this section if made public would divulge information entitled to protection under section 1905 of title 18 of the United States Code, such information or particular portion thereof shall be considered confidential in accordance with the purposes of that section, except that such record, report, document or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this Act, or when relevant in any proceeding under this Act.~~

~~(B) Any person not subject to the provisions of section 1905 of title 18 of the United States Code who knowingly and willfully divulges or discloses any information entitled to protection under this subsection shall, upon conviction,~~

1 ~~be subject to a fine of not more than \$5,000 or to~~
2 ~~imprisonment not to exceed one year, or both.~~

3
4 ~~(C) In submitting data under this Act, a person required to~~
5 ~~provide such data may (i) designate the data which such~~
6 ~~person believes is entitled to protection under this~~
7 ~~subsection and (ii) submit such designated data separately~~
8 ~~from other data submitted under this Act. A designation~~
9 ~~under this paragraph shall be made in writing and in such~~
10 ~~manner as the President may prescribe by regulation.~~

11
12 ~~(D) Notwithstanding any limitation contained in this~~
13 ~~section or any other provision of law, all information~~
14 ~~reported to or otherwise obtained by the (or any~~
15 ~~representative of the President) under this Act shall be~~
16 ~~made available, upon written request of any duly~~
17 ~~authorized committee of the Congress, to such committee.~~

18
19 ~~(E) No person required to provide information under this~~
20 ~~Act may claim that the information is entitled to~~
21 ~~protection under this paragraph unless such person shows~~
22 ~~each of the following:~~

23
24 ~~(i) Such person has not disclosed the information to~~
25 ~~any other person, other than a member of a local~~
26 ~~emergency planning committee established under title~~
27 ~~III of the Amendments and Reauthorization Act of~~
28 ~~1986, an officer or employee of the United States or~~
29 ~~a State or local government, an employee of such~~
30 ~~person, or a person who is bound by a confidentiality~~
31 ~~agreement, and such person has taken reasonable~~
32 ~~measures to protect the confidentiality of such~~
33 ~~information and intends to continue to take such~~
34 ~~measures.~~

35
36 ~~(ii) The information is not required to be disclosed,~~
37 ~~or otherwise made available, to the public under any~~
38 ~~other Federal or State law.~~

39
40 ~~(iii) Disclosure of the information is likely to cause~~
41 ~~substantial harm to the competitive position of such~~
42 ~~person.~~
43

~~(iv) The specific chemical identity, if sought to be protected, is not readily discoverable through reverse engineering.~~

~~(F) The following information with respect to any hazardous substance at the facility or vessel shall not be entitled to protection under this paragraph:~~

~~(i) The trade name, common name, or generic class or category of the hazardous substance.~~

~~(ii) The physical properties of the substance, including its boiling point, melting point, flash point, specific gravity, vapor density, solubility in water, and vapor pressure at 20 degrees celsius.~~

~~(iii) The hazards to health and the environment posed by the substance, including physical hazards (such as explosion) and potential acute and chronic health hazards.~~

~~(iv) The potential routes of human exposure to the substance at the facility, establishment, place, or property being investigated, entered, or inspected under this subsection.~~

~~(v) The location of disposal of any waste stream.~~

~~(vi) Any monitoring data or analysis of monitoring data pertaining to disposal activities.~~

~~(vii) Any hydrogeologic or geologic data.~~

~~(viii) Any groundwater monitoring data.]~~

(7) Administrative subpoenas — When it would assist in the collection of information necessary or appropriate for the purposes of implementing this Act, the President may by subpoena require the attendance and testimony of witnesses and the production of reports, papers, documents, answers to questions, and other information that the President deems necessary. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In the

1 *event of contumacy or failure or refusal of any person to obey*
2 *any such subpoena, any district court of the United States in*
3 *which venue is proper shall have jurisdiction to order any such*
4 *person to comply with such subpoena. Any failure to obey such*
5 *an order of the court is punishable by the court as a contempt*
6 *thereof.*

7
8 **(8) Confidentiality of information —**
9

10 *(A) Any records, reports, or information obtained from*
11 *any person under this section (including records, reports*
12 *or information obtained by representatives of the*
13 *President and records, reports or information obtained*
14 *pursuant to a contract, grant or other agreement to*
15 *perform work pursuant to this section, but not including*
16 *documents, reports, compilations, summaries, or other*
17 *analyses prepared by the President or representatives of*
18 *the President which reference or incorporate information*
19 *obtained under this section) shall be available to the*
20 *public, except as follows:*

21
22 *(i) Upon a showing satisfactory to the President (or*
23 *the State, as the case may be) by any person that*
24 *records, reports or information, or any particular*
25 *part thereof (other than health or safety effects data),*
26 *to which the President (or the State, as the case may*
27 *be) or any officer, employee, or representative has*
28 *access under this section if made public would*
29 *divulge information entitled to protection under*
30 *section 1905 of Title 18 of the U.S. Code, such*
31 *information or particular portion thereof shall be*
32 *considered confidential in accordance with the*
33 *purposes of that section, except that such record,*
34 *report, document or information may be disclosed to*
35 *other officers, employees, or authorized*
36 *representatives of the United States (including*
37 *government contractors) concerned with carrying out*
38 *this chapter, or when relevant in any proceeding*
39 *under this chapter, or, if such records, reports or*
40 *information are obtained or submitted to the United*
41 *States (or the State, as the case may be) pursuant to a*
42 *contract, grant or other agreement to perform work*

pursuant to this section, to persons from whom the President seeks to recover costs pursuant to this Act.

(ii) This section does not require that information which is exempt from disclosure pursuant to section 522(a) of Title 5 of the U.S. Code by reason of subsection (b)(5), subsection (b)(6), or subsection (b)(7) of such section, be available to the public, nor shall the disclosure of any such information pursuant to this section authorize disclosure to other parties or be deemed to waive any confidentiality privilege available to the President under any federal or State law. [See SRA §401(b) at page 44]

(f) In awarding contracts to any person engaged in response actions, the President or the State, in any case where it is awarding contracts pursuant to a contract entered into under subsection (d) of this section, shall require compliance with Federal health and safety standards established under section 301(f) of this Act by contractors and subcontractors as a condition of such contracts.

(g) (1) All laborers and mechanics employed by contractors or subcontractors in the performance of construction, repair, or alteration work funded in whole or in part under this section shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act. The President shall not approve any such funding without first obtaining adequate assurance that required labor standards will be maintained upon the construction work.

(2) The Secretary of Labor shall have, with respect to the labor standards specified in paragraph (1), the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F. R. 3176; 64 Stat. 1267) and section 276c of title 40 of the United States Code.

(h) EMERGENCY PROCUREMENT POWERS; EXERCISE BY PRESIDENT. — Notwithstanding any other provision of law, subject to the provisions of section 111 of this Act, the President may authorize the use of such emergency procurement powers as he deems necessary to effect the purpose of this Act. Upon determination that such procedures are necessary, the President shall promulgate regulations prescribing the circumstances under which such authority shall be used and the procedures governing the use of such authority.

(i) (1) There is hereby established within the Public Health Service an agency, to be known as the Agency for Toxic Substances and Disease Registry, which shall report directly to the Surgeon General of the United States. The Administrator of said Agency shall, with the cooperation of the Administrator of the Environmental Protection Agency, the Commissioner of the Food and Drug Administration, the Directors of the National Institute of Medicine, National Institute of Environmental Health Sciences, National Institute of Occupational Safety and Health, Centers for Disease Control and Prevention, the Administrator of the Occupational Safety and Health Administration, the Administrator of the Social Security Administration, the Secretary of Transportation, and appropriate State and local health officials, effectuate and implement the health related authorities of this Act. In addition, said Administrator shall —

~~[(A) in cooperation with the States, establish and maintain a national registry of serious diseases and illnesses and a national registry of persons exposed to toxic substances;]~~

(A) in cooperation with the States, for scientific purposes and public health purposes, establish and maintain a national registry of persons exposed to toxic substances; [See SRA §109(a) at page 17]

(B) establish and maintain inventory of literature, research, and studies on the health effects of toxic substances;

(C) in cooperation with the States, and other agencies of the Federal Government, establish and maintain a complete listing of areas closed to the public or otherwise restricted in use because of toxic substance contamination:

(D) in cases of public health emergencies caused or believed to be caused by exposure to toxic substances, provide medical care and testing to exposed individuals, including but not limited to tissue sampling, chromosomal testing where appropriate, epidemiological studies, or any other assistance appropriate under the circumstances; and

(E) either independently or as part of other health status survey, conduct periodic survey and screening programs to determine relationships between exposure to toxic substances and illness. In cases of public health emergencies, exposed persons shall be eligible for ~~[admission to hospitals and other facilities and services~~

~~operated or provided by the Public Health Service]~~
~~referral to accredited medical care providers. [See SRA~~
~~§109(b) at page 17]~~

(2) (A) Within 6 months after the enactment of the Superfund Amendments and Reauthorization Act of 1986, the Administrator of the Agency for Toxic Substances and Disease Registry (ATSDR) and the Administrator of the Environmental Protection Agency (EPA) shall prepare a list, in order of priority, of at least 100 hazardous substances which are most commonly found at facilities on the National Priorities List and which, in their sole discretion, they determine are posing the most significant potential threat to human health due to their known or suspected toxicity to humans and the potential for human exposure to such substances at facilities on the National Priorities List or at facilities to which a response to a release or a threatened release under this section is under consideration.

(B) Within 24 months after the enactment of the Superfund Amendments and Reauthorization Act of 1986, the Administrator of ATSDR and the Administrator of EPA shall revise the list prepared under subparagraph (A). Such revision shall include, in order of priority, the addition of 100 or more such hazardous substances. In each of the 3 consecutive 12-month periods that follow, the Administrator of ATSDR and the Administrator of EPA shall revise, in the same manner as provided in the 2 preceding sentences, such list to include not fewer than 25 additional hazardous substances per revision. The Administrator of ATSDR and the Administrator of EPA shall not less often than once every year thereafter revise such list to include additional hazardous substances in accordance with the criteria in subparagraph (A).

(3) Based on all available information, including information maintained under paragraph (1)(B) and data developed and collected on the health effects of hazardous substances under this paragraph, the Administrator of ATSDR shall prepare toxicological profiles of each of the substances listed pursuant to paragraph (2). The toxicological profiles shall be prepared in accordance with guidelines developed by the Administrator of ATSDR and the Administrator of EPA. Such profiles shall include, but not be limited to each of the following:

(A) An examination, summary, and interpretation of available toxicological information and epidemiologic evaluations on a

1 hazardous substance in order to ascertain the levels of significant
2 human exposure for the substance and the associated acute, subacute,
3 and chronic health effects.

4
5 (B) A determination of whether adequate information on the health
6 effects of each substance is available or in the process of
7 development to determine levels of exposure which present a
8 significant risk to human health of acute, subacute, and chronic
9 health effects.

10
11 (C) Where appropriate, an identification of toxicological testing
12 needed to identify the types or levels of exposure that may present
13 significant risk of adverse health effects in humans.

14
15 ~~[Any toxicological profile or revision thereof shall reflect the~~
16 ~~Administrator of ATSDR's assessment of all relevant~~
17 ~~toxicological testing which has been peer reviewed. The profiles~~
18 ~~required to be prepared under this paragraph for those~~
19 ~~hazardous substances listed under subparagraph (A) of~~
20 ~~paragraph (2) shall be completed, at a rate of no fewer than 25~~
21 ~~per year, within 4 years after the enactment of the Superfund~~
22 ~~Amendments and Reauthorization Act of 1986. A profile~~
23 ~~required on a substance listed pursuant to subparagraph (B) of~~
24 ~~paragraph (2) shall be completed within 3 years after addition~~
25 ~~to the list. The profiles prepared under this paragraph shall be~~
26 ~~of those substances highest on the list of priorities under~~
27 ~~paragraph (2) for which profiles have not previously been~~
28 ~~prepared. Profiles required under this paragraph shall be~~
29 ~~revised and republished as necessary, but no less often than once~~
30 ~~every 3 years. Such profiles shall be provided to the States and~~
31 ~~made available to other interested parties.]~~

32
33 *Any toxicological profile or revision thereof shall reflect the*
34 *Administrator of ATSDR's assessment of all relevant*
35 *toxicological testing which has been peer reviewed. The*
36 *profiles prepared under this paragraph shall be for those*
37 *substances highest on the list of priorities under paragraph (2)*
38 *for which profiles have not previously been prepared or for*
39 *substances not on the listing but which have been found at non-*
40 *National Priorities List facilities and which have been*
41 *determined by ATSDR to be of critical health concern. Profiles*
42 *required under this paragraph shall be revised and republished*
43 *as necessary, based on scientific need. Such profiles shall be*

1 *provided to the States and made available to other interested*
2 *parties. [See SRA §110 at page 18]*
3

4 (4) The Administrator of the ATSDR shall provide consultations upon
5 request on health issues relating to exposure to hazardous or toxic
6 substances, on the basis of available information, to the Administrator of
7 EPA, State officials, and local officials. Such consultations to individuals
8 may be provided by States under cooperative agreements established under
9 this Act.
10

11 (5) (A) For each hazardous substance listed pursuant to paragraph (2),
12 the Administrator of ATSDR (in consultation with the Administrator
13 of EPA and other agencies and programs of the Public Health
14 Service) shall assess whether adequate information on the health
15 effects of such substance is available. For any such substance for
16 which adequate information is not available (or under development),
17 the Administrator of ATSDR, in cooperation with the Director of
18 the National Toxicology Program, shall assure the initiation of a
19 program of research ~~[designed to determine the health effects~~
20 ~~(and techniques for development of methods to determine~~
21 ~~such health effects) of such substance]~~ *conducted directly*
22 *or by means such as cooperative agreements and grants*
23 *with appropriate public and nonprofit institutions. The*
24 *research shall be designed to determine the health effects*
25 *(and techniques for development of methods to determine*
26 *such health effects) of the substance.* Where feasible, such
27 program shall seek to develop methods to determine the health
28 effects of such substance in combination with other substances with
29 which it is commonly found. Before assuring the initiation of such
30 program, the Administrator of ATSDR shall consider
31 recommendations of the Interagency Testing Committee established
32 under section 4(e) of the Toxic Substances Control Act on the types
33 of research that should be done. Such program shall include, to the
34 extent necessary to supplement existing information, but shall not be
35 limited to — [See SRA §111(a)(1) at page 18]
36

37 (i) laboratory and other studies to determine short,
38 intermediate, and long-term health effects;
39

40 (ii) laboratory and other studies to determine organ-specific,
41 site-specific, and system-specific acute and chronic toxicity;
42

(iii) laboratory and other studies to determine the manner in which such substances are metabolized or to otherwise develop an understanding of the biokinetics of such substances; **[and]**

(iv) laboratory and other studies can lead to the development of innovative techniques for predicting organ-specific, site-specific, and system-specific acute and chronic toxicity; and [See SRA §111(a)(2) at page 18]

(v) where there is a possibility of obtaining human data, the collection of such information. [See SRA §111(a)(2) at page 18]

(B) In assessing the need to perform laboratory and other studies, as required by subparagraph (A), the Administrator of ATSDR shall consider —

(i) the availability and quality of existing test data concerning the substance on the suspected health effect in question;

(ii) the extent to which testing already in progress will, in a timely fashion, provide data that will be adequate to support the preparation of toxicological profiles as required by paragraph (3); and

(iii) such other scientific and technical factors as the Administrator of ATSDR may determine are necessary for the effective implementation of this subsection.

(C) In the development and implementation of any research program under this paragraph, the Administrator of ATSDR and the Administrator of EPA shall coordinate such research program implemented under this paragraph with the National Toxicology Program and with programs of toxicological testing established under the Toxic Substances Control Act and the Federal Insecticide, Fungicide and Rodenticide Act. The purpose of such coordination shall be to avoid duplication of effort and to assure that the hazardous substances listed pursuant to this subsection are tested thoroughly at the earliest practicable date. Where appropriate, consistent with such purpose, a research program under this paragraph may be carried out using such programs of toxicological testing.

~~[(D) It is the sense of the Congress that the costs of research programs under this paragraph be borne by the manufacturers and processors of the hazardous substance in question, as required in programs of toxicological testing under the Toxic Substances Control Act. Within 1 year after the enactment of the Superfund Amendments and Reauthorization Act of 1986, the Administrator of EPA shall promulgate regulations which provide, where appropriate, for payment of such costs by manufacturers and processors under the Toxic Substances Control Act, and registrants under the Federal Insecticide, Fungicide, and Rodenticide Act, and recovery of such costs from responsible parties under this Act.] [See SRA §111(b) at page 19]~~

- (6) ~~[(A) The Administrator of ATSDR shall perform a health assessment for each facility on the National Priorities List established under section 105. Such health assessment shall be completed not later than December 10, 1988, for each facility proposed for inclusion on such list prior to the date of the enactment of the Superfund Amendments and Reauthorization Act of 1986 or not later than one year after the date of proposal for inclusion on such list for each facility proposed for inclusion on such list after such date of enactment.]~~

(A) The Administrator of ATSDR shall perform a public health assessment or related health activity for each facility on the National Priorities List established under section 105 of this Act. The public health assessment or related health activity shall be completed for each facility proposed for inclusion on the National Priorities List not later than one year after the date of proposal for inclusion, including those facilities owned by any department, agency, or instrumentality of the United States. [See SRA §112(a) at page 19]

(B) The Administrator of ATSDR may perform health assessments for releases or facilities where individual persons or licensed physicians provide information that individuals have been exposed to a hazardous substance, for which the probable source of such exposure is a release. In addition to other methods (formal or informal) of providing such information, such individual persons or

1 licensed physicians may submit a petition to the Administrator of
2 ATSDR providing such information and requesting a health
3 assessment. If such a petition is submitted and the Administrator of
4 ATSDR does not initiate a health assessment, the Administrator of
5 ATSDR shall provide a written explanation of why a health
6 assessment is not appropriate.

7
8 (C) In determining the priority in which to conduct health
9 assessments under this subsection, the Administrator of ATSDR, in
10 consultation with the Administrator of EPA, shall give priority to
11 those facilities at which there is documented evidence of the release
12 of hazardous substances, at which the potential risk to human health
13 appears highest, and for which in the judgment of the Administrator
14 of ATSDR existing health assessment data are inadequate to assess the
15 potential risk to human health as provided in subparagraph (F). In
16 determining the priorities for conducting health assessments under
17 this subsection, the Administrator of ATSDR shall consider the
18 National Priorities List schedules and the needs of the Environmental
19 Protection Agency and other Federal agencies pursuant to schedules
20 for remedial investigation and feasibility studies.

21
22 (D) Where a health assessment is done at a site on the National
23 Priorities List, the Administrator of ATSDR shall complete such
24 assessment promptly and, to the maximum extent practicable, before
25 the completion of the remedial investigation and feasibility study at
26 the facility concerned.

27
28 (E) Any State or political subdivision carrying out a health
29 assessment for a facility shall report the results of the assessment to
30 the Administrator of ATSDR and the Administrator of EPA and
31 shall include recommendations with respect to further activities
32 which need to be carried out under this section. The Administrator
33 of ATSDR shall state such recommendation in any report on the
34 results of any assessment carried out directly by the Administrator of
35 ATSDR for such facility and shall issue periodic reports which
36 include the results of all the assessments carried out under this
37 subsection.

38
39 (F) For the purposes of this subsection and section 111(c)(4), the
40 term "health assessments" shall include preliminary assessments of
41 the potential risk to human health posed by individual sites and
42 facilities, based on such factors as the nature and extent of
43 contamination, the existence of potential pathways of human

1 exposure (including ground or surface water contamination, air
2 emissions, and food chain contamination), the size and potential
3 susceptibility of the community within the likely pathways of
4 exposure, the comparison of expected human exposure levels to the
5 short-term and long-term health effects associated with identified
6 hazardous substances and any available recommended exposure or
7 tolerance limits for such hazardous substances, and the comparison
8 of existing morbidity and mortality data on diseases that may be
9 associated with the observed levels of exposure. The Administrator
10 of ATSDR shall use appropriate data, risk assessments, risk
11 evaluations and studies available from the Administrator of EPA.

12
13 (G) The purpose of health assessments under this subsection shall be
14 to assist in determining whether actions under paragraph (11) of this
15 subsection should be taken to reduce human exposure to hazardous
16 substances from a facility and whether additional information on
17 human exposure and associated health risks is needed and should be
18 acquired by conducting epidemiological studies under paragraph (7),
19 establishing a registry under paragraph (8), establishing a health
20 surveillance program under paragraph (9), or through other means.
21 In using the results of health assessments for determining additional
22 actions to be taken under this section, the Administrator of ATSDR
23 may consider additional information on the risks to the potentially
24 affected population from all sources of such hazardous substances
25 including known point or nonpoint sources other than those from the
26 facility in question.

27
28 (H) At the completion of each ~~[health assessment]~~ *public health*
29 *assessment or related health activity*, the Administrator of
30 ATSDR shall provide the Administrator of EPA and each affected
31 State with the results of ~~[such assessment]~~ *public health*
32 *assessment or related health activity*, together with any
33 recommendations for further actions under this subsection or
34 otherwise under this Act. In addition, if the ~~[health assessment]~~
35 *public health assessment or related health activity* indicates
36 that the release or threatened release concerned may pose a serious
37 threat to human health or the environment, the Administrator of
38 ATSDR shall so notify the Administrator of EPA who shall
39 promptly evaluate such release or threatened release in accordance
40 with the hazard ranking system referred to in section 105(a)(8)(A) to
41 determine whether the site shall be placed on the National Priorities
42 List or, if the site is already on the list, the Administrator of ATSDR

1 may recommend to the Administrator of EPA that the site be
2 accorded a higher priority. [See SRA §112(b) at page 19]
3

- 4 (7) ~~[(A) Whenever in the judgment of the Administrator of~~
5 ~~ATSDR it is appropriate on the basis of the results of a~~
6 ~~health assessment, the Administrator of ATSDR shall~~
7 ~~conduct a pilot study of health effects for selected groups~~
8 ~~of exposed individuals in order to determine the~~
9 ~~desirability of conducting full scale epidemiological or~~
10 ~~other health studies of the entire exposed population.]~~

11
12 (A) *Whenever in the judgment of the Administrator of*
13 *ATSDR it is appropriate on the basis of the results of a*
14 *public health assessment or on the basis of other*
15 *appropriate information, the Administrator of ATSDR*
16 *shall conduct a human health study of exposure or other*
17 *health effects for selected groups or individuals in order*
18 *to determine the desirability of conducting full scale*
19 *epidemiologic or other health studies of the entire exposed*
20 *population. [See SRA §113 at page 20]*
21

22 (B) Whenever in the judgment of the Administrator of ATSDR it is
23 appropriate on the basis of the results of such pilot study or other
24 study or health assessment, the Administrator of ATSDR shall
25 conduct such full scale epidemiological or other health studies as may
26 be necessary to determine the health effects on the population
27 exposed to hazardous substances from a release or threatened release.
28 If a significant excess of disease in a population is identified, the
29 letter of transmittal of such study shall include an assessment of other
30 risk factors, other than a release, that may, in the judgment of the
31 peer review group, be associated with such disease, if such risk
32 factors were not taken into account in the design or conduct of the
33 study.
34

- 35 (8) In any case in which the results of a health assessment indicate a
36 potential significant risk to human health, the Administrator of ATSDR
37 shall consider whether the establishment of a registry of exposed persons
38 would contribute to accomplishing the purposes of this subsection, taking
39 into account circumstances bearing on the usefulness of such a registry,
40 including the seriousness or unique character of identified diseases or the
41 likelihood of population migration from the affected area.
42

(9) Where the Administrator of ATSDR has determined that there is a significant increased risk of adverse health effects in humans from exposure to hazardous substances based on the results of a health assessment conducted under paragraph (6); an epidemiologic study conducted under paragraph (7), or an exposure registry that has been established under paragraph (8), and the Administrator of ATSDR has determined that such exposure is the result of a release from a facility, the Administrator of ATSDR shall initiate a health surveillance program for such population. This program shall include but not be limited to —

(A) periodic medical testing where appropriate of population subgroups to screen for diseases for which the population or subgroup is at significant increased risk; and

(B) a mechanism to refer for treatment those individuals within such population who are screened positive for such diseases.

(10) Two years after the date of the enactment of the Superfund Amendments and Reauthorization Act of 1986, and every 2 years thereafter, the Administrator of ATSDR shall prepare and submit to the Administrator of EPA and to the Congress a report on the results of the activities of ATSDR regarding —

(A) health assessments and pilot health effects studies conducted;

(B) epidemiologic studies conducted;

(C) hazardous substances which have been listed under paragraph (2), toxicological profiles which have been developed, and toxicologic testing which has been conducted or which is being conducted under this subsection;

(D) registries established under paragraph (8); and

(E) an overall assessment, based on the results of activities conducted by the Administrator of ATSDR, of the linkage between human exposure to individual or combinations of hazardous substances due to releases from facilities covered by this Act or the Solid Waste Disposal Act and any increased incidence or prevalence of adverse health effects in humans.

(11) If a health assessment or other study carried out under this subsection contains a finding that the exposure concerned presents a significant risk to

1 human health, the President shall take such steps as may be necessary to
2 reduce such exposure and eliminate or substantially mitigate the significant
3 risk to human health. Such steps may include the use of any authority
4 under this Act, including, but not limited to —

5
6 (A) provision of alternative water supplies, and

7
8 (B) permanent or temporary relocation of individuals.
9

10 In any case in which information is insufficient, in the judgment of the
11 Administrator of ATSDR or the President to determine a significant human
12 exposure level with respect to a hazardous substance, the President may
13 take such steps as may be necessary to reduce the exposure of any person to
14 such hazardous substance to such level as the President deems necessary to
15 protect human health.
16

17 (12) In any case which is the subject of a petition, a health assessment or
18 study, or a research program under this subsection, nothing in this
19 subsection shall be construed to delay or otherwise affect or impair the
20 authority of the President, the Administrator of ATSDR, or the
21 Administrator of EPA to exercise any authority vested in the President, the
22 Administrator of ATSDR or the Administrator of EPA under any other
23 provision of law (including, but not limited to, the imminent hazard
24 authority of section 7003 of the Solid Waste Disposal Act) or the response
25 and abatement authorities of this Act.
26

27 (13) All studies and results of research conducted under this subsection
28 (other than health assessments) shall be reported or adopted only after
29 appropriate peer review. Such peer review shall be completed, to the
30 maximum extent practicable, within a period of 60 days. In the case of
31 research conducted under the National Toxicology Program, such peer
32 review may be conducted by the Board of Scientific Counselors. In the
33 case of other research, such peer review shall be conducted by panels
34 consisting of no less than three nor more than seven members, who shall be
35 disinterested scientific experts selected for such purpose by the
36 Administrator of ATSDR or the Administrator of EPA, as appropriate, on
37 the basis of their reputation for scientific objectivity and the lack of
38 institutional ties with any person involved in the conduct of the study or
39 research under review. Support services for such panels shall be provided
40 by the Agency for Toxic Substances and Disease Registry, or by the
41 Environmental Protection Agency, as appropriate.
42

1 ~~[(14) In the implementation of this subsection and other health-~~
2 ~~related authorities of this Act, the Administrator of ATSDR~~
3 ~~shall assemble, develop as necessary, and distribute to the~~
4 ~~States, and upon request to medical colleges, physicians, and~~
5 ~~other health professionals, appropriate educational materials~~
6 ~~(including short courses) on the medical surveillance, screening,~~
7 ~~and methods of diagnosis and treatment of injury or disease~~
8 ~~related to exposure to hazardous substances (giving priority to~~
9 ~~those listed in paragraph (2)), through such means as the~~
10 ~~Administrator of ATSDR deems appropriate.]~~

11
12 *(14) In implementing this subsection and other health-related*
13 *provisions of this Act in cooperation with the States, the*
14 *Administrator of ATSDR shall —*

15
16 *(A) assemble, develop as necessary, and distribute to the*
17 *States, medical colleges, physicians, nursing institutions,*
18 *nurses, and other health professionals and medical centers,*
19 *appropriate educational materials (including short courses)*
20 *on the medical surveillance, screening, and methods of*
21 *prevention, diagnosis and treatment of injury or disease*
22 *related to exposure to hazardous substances (giving*
23 *priority to those listed in paragraph (2)), through means*
24 *the Administrator of ATSDR considers appropriate; and*

25
26 *(B) assemble, develop as necessary, and distribute to the*
27 *general public and to at-risk populations appropriate*
28 *educational materials and other information on human*
29 *health effects of hazardous substances. [See SRA §114 at*
30 *page 20]*

31
32 *(15) (A) The activities of the Administrator of ATSDR described in this*
33 *subsection and section 111(c)(4) shall be carried out by the*
34 *Administrator of ATSDR, either directly or through [cooperative*
35 *agreements with States (or political subdivisions thereof)]*
36 *grants, cooperative agreements, or contracts with States*
37 *(or political subdivisions thereof), other appropriate*
38 *public authorities, public or private institutions, colleges,*
39 *and universities, and professional associations which the*
40 *Administrator of ATSDR determines are capable of carrying out*
41 *such activities. Such activities shall include provision of*
42 *consultations on health information, the conduct of public health*
43 *assessments, including those required under section 3019(b) of the*

1 Solid Waste Disposal Act, health studies, registries, and health
2 surveillance. [See SRA §115(a) at page 21]; [See SRA §115(b) at
3 page 21]; [See SRA §115(c) at page 21]

4
5 *(B) When a public health assessment or related health*
6 *activity is conducted at a facility on, or a release being*
7 *evaluated for inclusion on the National Priorities List, the*
8 *Administrator of ATSDR may provide the assistance*
9 *specified in this paragraph to public or private non-profit*
10 *entities, individuals, and community-based groups who*
11 *may be affected by the release or threatened release of*
12 *hazardous substances in the environment. [See SRA §115(d)*
13 *at page 21]*

14
15 (16) The President shall provide adequate personnel for ATSDR, which
16 shall not be fewer than 100 employees. For purposes of determining the
17 number of employees under this subsection, an employee employed by
18 ATSDR on a part-time career employment basis shall be counted as a
19 fraction which is determined by dividing 40 hours into the average number
20 of hours of such employee's regularly scheduled workweek.

21
22 (17) In accordance with section 120 (relating to Federal facilities), the
23 Administrator of ATSDR shall have the same authorities under this section
24 with respect to facilities owned or operated by a department, agency, or
25 instrumentality of the United States as the Administrator of ATSDR has
26 with respect to any nongovernmental entity.

27
28 (18) If the Administrator of ATSDR determines that it is appropriate for
29 purposes of this section to treat a pollutant or contaminant as a hazardous
30 substance, such pollutant or contaminant shall be treated as a hazardous
31 substance for such purpose.

32
33 (j) ACQUISITION OF PROPERTY. —

34
35 (1) Authority. — The President is authorized to acquire, by purchase,
36 lease, condemnation, donation, or otherwise, any real property or any
37 interest in real property that the President in his discretion determines is
38 needed to conduct a ~~[remedial]~~ *response* action under this Act. There
39 shall be no cause of action to compel the President to acquire any interest
40 in real property under this Act. [See SRA §505(b)(1) at page 94]

41
42 ~~[(2) State assurance. — The President may use the authority of~~
43 ~~paragraph (1) for a remedial action only if, before an interest~~

1 ~~in real estate is acquired under this subsection, the State in~~
2 ~~which the interest to be acquired is located assures the~~
3 ~~President, through a contract or cooperative agreement or~~
4 ~~otherwise, that the State will accept transfer of the interest~~
5 ~~following completion of the remedial action.] [See SRA §505(b)(2)~~
6 ~~at page 94]~~

7
8 [(3)] (2) EXEMPTION. — No Federal, State, or local government
9 agency shall be liable under this Act solely as a result of acquiring an
10 interest in real [estate] *property* under this subsection.⁵ [See SRA
11 §505(b)(3) at page 94]

12
13 (4) *DISPOSAL AUTHORITY.* — *The President is authorized to*
14 *dispose of any interest in real property acquired for use by the*
15 *Administrator under this subsection by sale, exchange, donation*
16 *or otherwise and any such interest in real property shall not be*
17 *subject to any of the provisions of Section 120 except the notice*
18 *provisions of Section 120(h)(1). Any moneys received by the*
19 *President pursuant to this subparagraph shall be deposited in the*
20 *Fund.* [See SRA §505(b)(4) at page 95]

⁵Section 505(b)(4) of the Administration bill (page 95) says to add a paragraph (4) to section 104(j) of CERCLA; however, there is no paragraph (3) because it was deleted by §505(b)(3) of the Administration bill.

NATIONAL CONTINGENCY PLAN

SEC. 105 (a) REVISION AND REPUBLICATION. — Within one hundred and eighty days after the enactment of this Act, the President shall, after notice and opportunity for public comments, revise and republish the national contingency plan for the removal of oil and hazardous substances, originally prepared and published pursuant to section 311 of the Federal Water Pollution Control Act, to reflect and effectuate the responsibilities and powers created by this Act, in addition to those matters specified in section 311(c)(2). Such revision shall include a section of the plan to be known as the national hazardous substance response plan which shall establish procedures and standards for responding to releases of hazardous substances, pollutants, and contaminants, which shall include at a minimum:

- (1) methods for discovering and investigating facilities at which hazardous substances have been disposed of or otherwise come to be located;
- (2) methods for evaluating, including analyses of relative cost, and remedying any releases or threats of releases from facilities which pose substantial danger to the public health or the environment;
- (3) methods and criteria for determining the appropriate extent of removal, remedy, and other measures;
- (4) appropriate roles and responsibilities for the Federal, State, and local governments and for interstate and nongovernmental entities in effectuating the plan;
- (5) provision for identification, procurement, maintenance, and storage of response equipment and supplies;
- (6) a method for and assignment of responsibility for reporting the existence of such facilities which may be located on federally owned or controlled properties and any releases of hazardous substances from such facilities;
- (7) means of assuring that remedial action measures are cost-effective over the period of potential exposure to the hazardous substances or contaminated materials;
- (8) (A) criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable taking into account the

1 potential urgency of such action, for the purpose of taking removal
2 action. Criteria and priorities under this paragraph shall be based
3 upon relative risk or danger to public health or welfare or the
4 environment, in the judgment of the President, taking into account to
5 the extent possible the population at risk, the hazard potential of the
6 hazardous substances at such facilities, the potential for
7 contamination of drinking water supplies, the potential for direct
8 human contact, the potential for destruction of sensitive ecosystems,
9 the damage to natural resources which may affect the human food
10 chain and which is associated with any release or threatened release,
11 the contamination or potential contamination of the ambient air
12 which is associated with the release or threatened release, State
13 preparedness to assume State costs and responsibilities, *the*
14 *presence of multiple sources of risk (described in section*
15 *117(l)(3) of this Act) to affected communities,* and other
16 appropriate factors; [See SRA §108 at page 16]

17
18 (B) based upon the criteria set forth in subparagraph (A) of this
19 paragraph, the President shall list ~~[as part of the plan]~~ national
20 priorities among the known releases or threatened releases
21 throughout the United States and shall revise the list no less often
22 than annually. *The National Priorities List, and any other*
23 *modifications to the National Priorities List, may be*
24 *adopted administratively, and without rulemaking.* Within
25 one year after the date of enactment of this Act, and annually
26 thereafter, each State shall establish and submit for consideration by
27 the President priorities for remedial action among known releases
28 and potential releases in that State based upon the criteria set forth in
29 subparagraph (A) of this paragraph. In assembling or revising the
30 national list, the President shall consider any priorities established by
31 the States. To the extent practicable, the highest priority facilities
32 shall be designated individually and shall be referred to as the "top
33 priority among known response targets," and, to the extent
34 practicable, shall include among the one hundred highest priority
35 facilities one such facility from each State which shall be the facility
36 designated by the State as presenting the greatest danger to public
37 health or welfare or the environment among the known facilities in
38 such State. A State shall be allowed to designate its highest priority
39 facility only once. Other priority facilities or incidents may be listed
40 singly or grouped for response priority purposes; [See SRA §206(a)
41 at page 35]

1 (C) before determining that a facility is to be listed on the
2 National Priorities List, the Administrator shall publish a
3 notice proposing the facility for listing on the National
4 Priorities List and shall provide an opportunity for public
5 comment. Public notice and opportunity for comment also
6 shall be provided before a decision by the Administrator
7 to remove a facility from the National Priorities List. The
8 Administrator shall establish a procedure under which any
9 person may request that a facility be considered for listing
10 on, or removal from, the National Priorities List. The
11 Administrator has the sole discretion to list or remove a
12 facility on the National Priorities List. [See SRA §206(b) at
13 page 35]

14
15 (D) STATE REGISTRY. — Each State shall maintain and
16 make available to the public a list of facilities in the State
17 that are believed to present a current or potential hazard
18 to human health or the environment due to the release or
19 threatened release of hazardous substances or pollutants or
20 contaminants. Each State, in consultation with the
21 Administrator and other appropriate federal agencies,
22 shall prepare such a listing, and shall, on an annual basis,
23 publish the State Registry, specifying the governmental
24 agency addressing the facility, and whether the facility is
25 on the National Priorities List. [See SRA §207 at page 36]

26
27 (9) specified roles for private organizations and entities in preparation for
28 response and in responding to releases of hazardous substances, including
29 identification of appropriate qualifications and capacity therefor and
30 including consideration of minority firms in accordance with subsection
31 (f); and

32
33 (10) standards and testing procedures by which alternative or innovative
34 treatment technologies can be determined to be appropriate for utilization
35 in response actions authorized by this Act.

36
37 (11) standards and procedures for assessing the risks, and the
38 cumulative impacts of such risks, posed by the release or
39 threatened release of hazardous substances, or pollutants, or
40 contaminants from multiple sources of risk (as described in
41 section 117(l)(3) of this Act) in and around a facility, for
42 utilization in response actions authorized by this Act. The
43 demonstration projects authorized under subsection 117(l) of

1 *this Act shall be used to help meet the requirements of this*
2 *subsection. [See SRA §107 at page 16]*

3
4 The plan shall specify procedures, techniques, materials, equipment, and methods
5 to be employed in identifying, removing, or remedying releases of hazardous
6 substances comparable to those required under section 311(c)(2)(F) and (G) and
7 (j)(1) of the Federal Water Pollution Control Act. Following publication of the
8 revised national contingency plan, the response to and actions to minimize
9 damage from hazardous substances releases shall, to the greatest extent possible,
10 be in accordance with the provisions of the plan. The President may, from time
11 to time, revise and republish the national contingency plan.

12
13 (b) REVISION OF PLAN. — Not later than 18 months after the enactment of the
14 Superfund Amendments and Reauthorization Act of 1986, the President shall
15 revise the National Contingency Plan to reflect the requirements of such
16 amendments. The portion of such Plan known as "the National Hazardous
17 Substance Response Plan" shall be revised to provide procedures and standards
18 for remedial actions undertaken pursuant to this Act which are consistent with
19 amendments made by the Superfund Amendments and Reauthorization Act of
20 1986 relating to the selection of remedial action.

21
22 (c) HAZARD RANKING SYSTEM.

23
24 (1) REVISION. — Not later than 18 months after the enactment of the
25 Superfund Amendments and Reauthorization Act of 1986 and after
26 publication of notice and opportunity for submission of comments in
27 accordance with section 553 of title 5, United States Code, the President
28 shall by rule promulgate amendments to the hazard ranking system in
29 effect on September 1, 1984. Such amendments shall assure, to the
30 maximum extent feasible, that the hazard ranking system accurately
31 assesses the relative degree of risk to human health and the environment
32 posed by sites and facilities subject to review. The President shall establish
33 an effective date for the amended hazard ranking system which is not later
34 than 24 months after enactment of the Superfund Amendments and
35 Reauthorization Act of 1986. Such amended hazard ranking system shall
36 be applied to any site or facility to be newly listed on the National
37 Priorities List after the effective date established by the President. Until
38 such effective date of the regulations, the hazard ranking system in effect
39 on September 1, 1984, shall continue in full force and effect.

40
41 (2) HEALTH ASSESSMENT OF WATER CONTAMINATION RISKS. —
42 In carrying out this subsection, the President shall ensure that the human
43 health risks associated with the contamination or potential contamination

(either directly or as a result of the runoff of any hazardous substance or pollutant or contaminant from sites or facilities) of surface water are appropriately assessed where such surface water is, or can be, used for recreation or potable water consumption. In making the assessment required pursuant to the preceding sentence, the President shall take into account the potential migration of any hazardous substance or pollutant or contaminant through such surface water to downstream sources of drinking water.

(3) REEVALUATION NOT REQUIRED. — The President shall not be required to reevaluate, after the date of the enactment of the Superfund Amendments and Reauthorization Act of 1986 the hazard ranking of any facility which was evaluated in accordance with the criteria under this section before the effective date of the amendments to the hazard ranking system under this subsection and which was assigned a national priority under the National Contingency Plan.

(4) NEW INFORMATION. — Nothing in paragraph (3) shall preclude the President from taking new information into account in undertaking response actions under this Act.

(d) PETITION FOR ASSESSMENT OF RELEASE. — Any person who is, or may be, affected by a release or threatened release of a hazardous substance or pollutant or contaminant, may petition the President to conduct a preliminary assessment of the hazards to public health and the environment which are associated with such release or threatened release. If the President has not previously conducted a preliminary assessment of such release, the President shall, within 12 months after the receipt of any such petition, complete such assessment or provide an explanation of why the assessment is not appropriate. If the preliminary assessment indicates that the release or threatened release concerned may pose a threat to human health or the environment, the President shall promptly evaluate such release or threatened release in accordance with the hazard ranking system referred to in paragraph (8)(A) of subsection (a) to determine the national priority of such release or threatened release.

(e) RELEASES FROM EARLIER SITES. — Whenever there has been, after January 1, 1985, a significant release of hazardous substances or pollutants or contaminants from a site which is listed by the President as a "Site Cleaned Up To Date" on the National Priorities List (revised edition, December 1984) the site shall be restored to the National Priorities List, without application of the hazard ranking system.

(f) MINORITY CONTRACTORS. — In awarding contracts under this Act, the President shall consider the availability of qualified minority firms. The President shall describe, as part of any annual report submitted to the Congress under this Act, the participation of minority firms in contracts carried out under this Act. Such report shall contain a brief description of the contracts which have been awarded to minority firms under this Act and of the efforts made by the President to encourage the participation of such firms in programs carried out under this Act.

(g) SPECIAL STUDY WASTES. —

(1) APPLICATION. — This subsection applies to facilities —

(A) which as of the date of enactment of the Superfund Amendments and Reauthorization Act of 1986 were not included on, or proposed for inclusion on, the National Priorities List; and

(B) at which special study wastes described in paragraph (2), (3)(A)(ii) or (3)(A)(iii) of section 3001(b) of the Solid Waste Disposal Act are present in significant quantities, including any such facility from which there has been a release of a special study waste.

(2) CONSIDERATIONS IN ADDING FACILITIES TO NPL. — Pending revision of the hazard ranking system under subsection (c), the President shall consider each of the following factors in adding facilities covered by this section to the National Priorities List:

(A) The extent to which hazard ranking system score for the facility is affected by the presence of any special study waste at, or any release from, such facility.

(B) Available information as to the quantity, toxicity, and concentration of hazardous substances that are constituents of any special study waste at, or released from such facility, the extent of or potential for release of such hazardous constituents, the exposure or potential exposure to human population and the environment, and the degree of hazard to human health or the environment posed by the release of such hazardous constituents at such facility. This subparagraph refers only to available information on actual concentrations of hazardous substances and not on the total quantity of special study waste at such facility.

1 (3) SAVINGS PROVISIONS. — Nothing in this subsection shall be
2 construed to limit the authority of the President to remove any facility
3 which as of the date of enactment of the Superfund Amendments and
4 Reauthorization Act of 1986 is included on the National Priorities List
5 from such List, or not to list any facility which as of such date is proposed
6 for inclusion on such list.
7

8 (4) INFORMATION GATHERING AND ANALYSIS. — Nothing in this
9 Act shall be construed to preclude the expenditure of monies from the
10 Fund for gathering and analysis of information which will enable the
11 President to consider the specific factors required by paragraph (2).

ABATEMENT ACTIONS

SEC. 106.(a) In addition to any other action taken by a State or local government, when the President determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance *or pollutant or contaminant* from a facility, he may require the Attorney General of the United States to secure such relief as may be necessary to abate such danger or threat, and the district court of the United States in the district in which the threat occurs shall have jurisdiction to grant such relief as the public interest and the equities of the case may require. The President may also, after notice to the affected State, take other action under this section including, but not limited to, issuing such orders as may be necessary to protect public health and welfare and the environment. *The President may amend such orders and issue additional orders, as appropriate, without a subsequent finding of an imminent and substantial endangerment, to complete response action undertaken in response to a release or substantial threat of a release, or to require additional response actions that are necessary or appropriate.* [See SRA §402(a)(1) at page 46]; [See SRA §402(a)(2) at page 46]

(b) (1) Any person who, without sufficient cause, willfully violates, or fails or refuses to comply with, any order of the President under subsection (a) may, in an action brought in the appropriate United States district court [~~to enforce such order~~], be fined not more than \$ 25,000 for each day in which such violation occurs or such failure to comply continues *or be required to comply with such order, or both, even if another party has complied, or is complying, with the terms of the same order or another order pertaining to the same facility, release or threatened release. For purposes of this title, a "sufficient cause" requires —*

(A) *an objectively reasonable belief by the person to whom the order is issued that the person is not liable for any response costs under section 107 of this title; or*

(B) *that the action to be performed pursuant to the order is determined to be inconsistent with the national contingency plan.*

The existence or results of an allocation process pursuant to section 122a of this title shall not affect or constitute a basis for a determination of "sufficient cause." [See SRA §402(b)(1) at

1 page 471; [See SRA §402(b)(2) at page 471]; [See SRA §402(b)(3) at

2 page 471

3

4 (2) (A) Any person who receives and complies with the terms of any

5 order issued under subsection (a) may, within 60 days after

6 ~~[completion of] the President determines that such person~~

7 ~~has completed~~ the required action, petition the President for

8 reimbursement from the Fund for the reasonable costs of such

9 action, plus interest. ~~[Any interest payable under this~~

10 ~~paragraph shall accrue on the amounts expended from the~~

11 ~~date of expenditure at the same rate as specified for~~

12 ~~interest on investments of the Hazardous Substance~~

13 ~~Superfund established under subchapter A of chapter 98 of~~

14 ~~the Internal Revenue Code of 1954.]⁶ [See SRA §402(d) at~~

15 ~~page 481]; [See SRA §402(c) at page 471]~~

16

17 (B) If the President refuses to grant all or part of a petition made

18 under this paragraph, the petitioner may within 30 days of receipt of

19 such refusal file an action against the President in the appropriate

20 United States district court seeking reimbursement from the Fund.

21

22 (C) Except as provided in subparagraph (D), *or as may be*

23 *authorized in a settlement entered into under Section 122a*

24 *of this Title*, to obtain reimbursement, the petitioner shall establish

25 by a preponderance of the evidence that it is not liable for response

26 costs under section 107(a) and that costs for which it seeks

27 reimbursement are reasonable in light of the action required by the

28 relevant order. [See SRA §402(e) at page 48]

29

30 (D) A petitioner who is liable for response costs under section 107(a)

31 may also recover its reasonable costs of response to the extent that it

32 can demonstrate, on the administrative record, that the President's

33 decision in selecting the response action ordered was arbitrary and

34 capricious or was otherwise not in accordance with law.

35 Reimbursement awarded under this subparagraph shall include all

36 reasonable response costs incurred by the petitioner pursuant to the

37 portions of the order found to be arbitrary and capricious or

38 otherwise not in accordance with law.

39

40 (E) Reimbursement awarded by a court under subparagraph (C) or

41 (D) may include appropriate costs, fees, and other expenses in

⁶This sentence is moved (with one amendment) to §106(b)(4). The amendment is to change the word "paragraph" to "subsection." (See § 402(c) of the Administration bill (page 47).)

1 accordance with subsections (a) and (d) of section 2412 of title 28 of
2 the United States Code.

3
4 *(4) Any interest payable under this subsection shall accrue on*
5 *the amounts expended from the date of expenditure at the same*
6 *rate as specified for interest on investments of the Hazardous*
7 *Substance Superfund established under subchapter A of chapter*
8 *98 of the Internal Revenue Code of 1954.⁷ [See SRA §402(c) at*
9 *page 47]*

10
11 (c) Within one hundred and eighty days after enactment of this Act, the
12 Administrator of the Environmental Protection Agency shall, after consultation
13 with the Attorney General, establish and publish guidelines for using the
14 imminent hazard, enforcement, and emergency response authorities of this
15 section and other existing statutes administered by the Administrator of the
16 Environmental Protection Agency to effectuate the responsibilities and powers
17 created by this Act. Such guidelines shall to the extent practicable be consistent
18 with the national hazardous substance response plan, and shall include, at a
19 minimum, the assignment of responsibility for coordinating response actions with
20 the issuance of administrative orders, enforcement of standards and permits, the
21 gathering of information, and other imminent hazard and emergency powers
22 authorized by (1) sections 311(c)(2), 308, 309, and 504(a) of the Federal Water
23 Pollution Control Act, (2) sections 3007, 3008, 3013, and 7003 of the Solid
24 Waste Disposal Act, (3) sections 1445 and 1431 of the Safe Drinking Water Act,
25 (4) sections 113, 114, and 303 of the Clean Air Act, and (5) section 7 of the
26 Toxic Substances Control Act.

⁷Section 402(c) of the Administration bill (page 47) redesignates the second sentence of the current CERCLA §106(b)(2) as §106 (b)(4). However, there is no (b)(3).

LIABILITY

SEC. 107. (a) Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section —

(1) the owner ~~[and]~~ *or* operator of a vessel or a facility, [See SRA §404(a) at page 54]

(2) any person who at the time of disposal of any hazardous substance *or pollutant or contaminant* owned or operated any facility at which such hazardous substances *or pollutant or contaminant* were disposed of, [See SRA §404(g) at page 56]

(3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances *or pollutant or contaminant* owned or possessed by such person, ~~[by any other party or entity]~~, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances *or pollutant or contaminant*, and [See SRA §404(g) at page 56]; [See SRA §404(b) at page 55]; [See SRA §404(g) at page 56]

(4) any person who accepts or accepted any hazardous substances *or pollutant or contaminant* for transport to disposal or treatment facilities, incineration vessels or sites selected by such person, _____ ~~[from which there is a release]~~⁸, or a threatened release, which causes the incurrence of response costs, of a hazardous substance *or pollutant or contaminant*, shall be liable for — [See SRA §404(g) at page 56]; [See SRA §404(c)(1) at page 55]; [See SRA §404(c)(2) at page 55]; [See SRA §404(c)(3) at page 55]; [See SRA §404(g) at page 56]

(A) all costs of removal or remedial action, *including direct costs, indirect costs, and costs of overseeing response actions conducted by private parties* incurred by the United States Government or a State or an Indian tribe not inconsistent with the national contingency plan; [See SRA §404(d) at page 55]

(B) any ~~[other]~~ necessary costs of response incurred by any ~~[other]~~ person *other than the United States, a State or an Indian tribe* consistent with the national contingency plan; [See SRA §404(e)(1) at page 55]; [See SRA §404(e)(2) at page 55]

⁸Section 404(c) of the Administration bill (page 55) says to insert a blank line before the phrase "from which there is a release" and to move that phrase to the left margin.

1 (C) damages for injury to, destruction of, or loss of natural
2 resources, including the reasonable costs of assessing such injury,
3 destruction, or loss resulting from such a release; and
4

5 (D) the costs of any health assessment or health effects study carried
6 out under section 104(i).
7

8 ***(5) Notwithstanding paragraphs (1) through (4) of this***
9 ***subsection, a person who does not impede the performance of***
10 ***response actions or natural resource restoration shall not be***
11 ***liable —***
12

13 ***(A) to the extent liability is based solely on subsection***
14 ***107(a)(3) or 107(a)(4) of this Act, and the arrangement***
15 ***for disposal, treatment, or transport for disposal or***
16 ***treatment, or the acceptance for transport for disposal or***
17 ***treatment, involved less than five hundred (500) pounds of***
18 ***municipal solid waste (MSW) or sewage sludge as defined***
19 ***in sections 101(41) and 101(44) of this Act, respectively,***
20 ***or such greater or lesser amount as the Administrator***
21 ***may determine by regulation;***
22

23 ***(B) to the extent liability is based solely on subsection***
24 ***107(a)(3) or 107(a)(4) of this Act, and the arrangement***
25 ***for disposal, treatment, or transport for disposal or***
26 ***treatment, or the acceptance for transport for disposal or***
27 ***treatment, involved less than ten (10) pounds or liters of***
28 ***materials containing hazardous substances or pollutants or***
29 ***contaminants or such greater or lesser amount as the***
30 ***Administrator may determine by regulation, except***
31 ***where —***
32

33 ***(i) the Administrator has determined that such***
34 ***material contributed significantly or could contribute***
35 ***to the costs of response at the facility; or***
36

37 ***(ii) the person has failed to respond fully and***
38 ***completely to information requests by the United***
39 ***States, or has failed to certify that, on the basis of***
40 ***information within its possession, it qualifies for this***
41 ***exception;***
42

1 (C) to the extent liability is based solely on subsection
2 107(a)(1) of this Act, for a release or threat of release
3 from a facility, and the person is a bona fide prospective
4 purchaser of the facility as defined in section 101(39);

5
6 (D) to the extent the liability of a department, agency, or
7 instrumentality of the United States is based solely on
8 section 107(a)(1) or (2) with regard to a facility over
9 which the department, agency, or instrumentality exercised
10 no regulatory or other control over activities that directly
11 or indirectly resulted in a release of threat of a release of
12 a hazardous substance, and —

13
14 (i) all activities that directly or indirectly resulted in
15 a release of threat of a release of a hazardous
16 substance during the period of ownership by the
17 United States occurred prior to 1976;

18
19 (ii) the activities either directly or indirectly
20 resulting in a release or a threat of a release of a
21 hazardous substance at the facility were pursuant to a
22 statutory authority;

23
24 (iii) such department, agency, or instrumentality of
25 the United States did not cause or contribute to the
26 release or threat of release of hazardous substances
27 or pollutants or contaminants at the facility; and

28
29 (iv) there are persons, other than the United States,
30 who are both potentially liable for the release of
31 hazardous substances or pollutants or contaminants at
32 the facility and fully capable of performing or
33 financing the response action at the facility; or

34
35 (E) to the extent the liability of a federal or state entity or
36 municipality is based solely on its ownership of a road,
37 street, or other right of way or other public transportation
38 route over which hazardous substances are transported, or
39 the granting of a license or permit to conduct business; or

40
41 (F) for more than ten percent of total response costs at the
42 facility, in aggregate, for all persons to the extent their
43 whose liability is based solely on subsections 107(a)(3) or

107(a)(4) of this Act, and the arrangement for disposal, treatment, or transport for disposal or treatment, or the acceptance for transport for disposal or treatment involved only municipal solid waste (MSW) or sewage sludge as defined in sections 101(41) and 101(44), respectively, of this Act. Such limitation on liability shall apply only —

(i) where either the acts or omissions giving rise to liability occurred before the date thirty-six (36) months after enactment of this paragraph, or the person asserting the limitation institutes or participates in a qualified household hazardous waste collection program within the meaning of section 101(43); and

(ii) where the disposal did not occur on lands owned by the United States or any department, agency, or instrumentality thereof, or on any tribal land. [See SRA §403(a) at page 48]

The amounts recoverable in an action under this section shall include interest on the amounts recoverable under subparagraphs (A) through (D). Such interest shall accrue from the later of (i) the date payment of a specified amount is demanded in writing, or (ii) the date of the expenditure concerned. The rate of interest on the outstanding unpaid balance of the amounts recoverable under this section shall be the same rate as is specified for interest on investments of the Hazardous Substance Superfund established under subchapter A of chapter 98 of the Internal Revenue Code of 1954. For purposes of applying such amendments to interest under this subsection, the term "comparable maturity" shall be determined with reference to the date on which interest accruing under this subsection commences.

(b) Defenses. There shall be no liability under subsection (a) of this section for a person otherwise liable who can establish by a preponderance of the evidence that the release or threat of release of a hazardous substance *or pollutant or contaminant* and the damages resulting therefrom were caused solely by — [See SRA §404(g) at page 56]

(1) an act of God;

(2) an act of war;

(3) an act or omission of a third party other than an employee or agent of the defendant, or than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the defendant (except where the sole contractual arrangement arises from a published tariff and acceptance for carriage by a common carrier by rail), if the defendant establishes by a preponderance of the evidence that (a) he exercised due care with respect to the hazardous substance *or pollutant or contaminant* concerned, taking into consideration the characteristics of such hazardous substance, in light of all relevant facts and circumstances, and (b) he took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions; or [See SRA §404(g) at page 56]

(4) any combination of the foregoing paragraphs.

(c) (1) Except as provided in paragraph (2) of this subsection, the liability under this section of an owner or operator or other responsible person for each release of a hazardous substance *or pollutant or contaminant* or incident involving release of a hazardous substance *or pollutant or contaminant* shall not exceed — [See SRA §404(g) at page 56]

(A) for any vessel, other than an incineration vessel, which carries any hazardous substance *or pollutant or contaminant* as cargo or residue, \$300 per gross ton, or \$5,000,000, whichever is greater; [See SRA §404(g) at page 56]

(B) for any other vessel, other than an incineration vessel, \$300 per gross ton, or \$500,000, whichever is greater;

(C) for any motor vehicle, aircraft, pipeline (as defined in the Hazardous Liquid Pipeline Safety Act of 1979), or rolling stock, \$50,000,000 or such lesser amount as the President shall establish by regulation, but in no event less than \$5,000,000 (or, for releases of hazardous substances *or pollutant or contaminant* as defined in section 101(14)(A) of this title into the navigable waters, \$8,000,000). Such regulations shall take into account the size, type, location, storage, and handling capacity and other matters relating to the likelihood of release in each such class and to the economic impact of such limits on each such class; or [See SRA §404(g) at page 56]

(D) for any incineration vessel or any facility other than those specified in subparagraph (C) of this paragraph, the total of all costs of response plus \$50,000,000 for any damages under this title.

(2) Notwithstanding the limitations in paragraph (1) of this subsection, the liability of an owner or operator or other responsible person under this section shall be the full and total costs of response and damages; if (A)(i) the release or threat of release of a hazardous substance *or pollutant or contaminant* was the result of willful misconduct or willful negligence within the privity or knowledge of such person, or (ii) the primary cause of the release was a violation (within the privity or knowledge of such person) of applicable safety, construction, or operating standards or regulations; or (B) such person fails or refuses to provide all reasonable cooperation and assistance requested by a responsible public official in connection with response activities under the national contingency plan with respect to regulated carriers subject to the provisions of title 49 of the United States Code or vessels subject to the provisions of title 33 or 46 of the United States Code, subparagraph (A)(ii) of this paragraph shall be deemed to refer to Federal standards or regulations. [See SRA §404(g) at page 56]

(3) If any person who is liable for a release or threat of release of a hazardous substance *or pollutant or contaminant* fails without sufficient cause to properly provide removal or remedial action upon order of the President pursuant to section 104 or 106 of this Act, such person *in addition to liability for any response costs incurred by the United States as a result of such failure to take proper action* may be liable to the United States for punitive damages in an amount ~~[at least equal to, and not more than]~~ *up to* three times~~[,]~~ the amount of ~~[any costs incurred by the Fund as a result of such failure to take proper action]~~ *such response costs*. The President is authorized to commence a civil action against any such person to recover the punitive damages, which shall be in addition to any costs recovered from such person pursuant to section 112(c) of this Act. Any moneys received by the United States pursuant to this subsection shall be deposited in the Fund. [See SRA §404(g) at page 56]; [See SRA §404(f)(1) at page 55]; [See SRA §404(f)(2) at page 55]; [See SRA §404(f)(3) at page 55]; [See SRA §404(f)(4) at page 55]

(d) RENDERING CARE OR ADVICE. —

(1) IN GENERAL. — Except as provided in paragraph (2), no person shall be liable under this title for costs or damages as a result of actions taken or omitted in the course of rendering care, assistance, or advice in

1 accordance with the National Contingency Plan ("NCP") or at the direction
2 of an onscene coordinator appointed under such plan, with respect to an
3 incident creating a danger to public health or welfare or the environment
4 as a result of any releases of a hazardous substance *or pollutant or*
5 *contaminant* or the threat thereof. This paragraph shall not preclude
6 liability for costs or damages as the result of negligence on the part of such
7 person. [See SRA §404(g) at page 56]

8
9 (2) STATE AND LOCAL GOVERNMENTS. — No State or local
10 government shall be liable under this title for costs or damages as a result
11 of actions taken in response to an emergency created by the release or
12 threatened release of a hazardous substance *or pollutant or*
13 *contaminant* generated by or from a facility owned by another person.
14 This paragraph shall not preclude liability for costs or damages as a result
15 of gross negligence or intentional misconduct by the State or local
16 government. For the purpose of the preceding sentence, reckless, willful,
17 or wanton misconduct shall constitute gross negligence. [See SRA §404(g)
18 at page 56]

19
20 (3) SAVINGS PROVISION. — This subsection shall not alter the liability
21 of any person covered by the provisions of paragraph (1), (2), (3), or (4)
22 of subsection (a) of this section with respect to the release or threatened
23 release concerned.

24
25 (e) (1) No indemnification, hold harmless, or similar agreement or conveyance
26 shall be effective to transfer from the owner or operator of any vessel or
27 facility or from any person who may be liable for a release or threat of
28 release under this section, to any other person the liability imposed under
29 this section. Nothing in this subsection shall bar any agreement to insure,
30 hold harmless, or indemnify a party to such agreement for any liability
31 under this section.

32
33 (2) Nothing in this title, including the provisions of paragraph (1) of this
34 subsection, shall bar a cause of action that an owner or operator or any
35 other person subject to liability under this section, or a guarantor, has or
36 would have, by reason of subrogation or otherwise against any person.

37
38 (f) (1) NATURAL RESOURCES LIABILITY. — In the case of an injury to,
39 destruction of, or loss of natural resources under subparagraph (C) of
40 subsection (a) of this section liability shall be to the United States
41 Government and to any State for natural resources within the State or
42 belonging to, managed by, controlled by, or appertaining to such State and
43 to any Indian tribe for natural resources belonging to, managed by,

1 controlled by, or appertaining to such tribe, or held in trust for the benefit
2 of such tribe, or belonging to a member of such tribe if such resources are
3 subject to a trust restriction on alienation: *Provided, however,* That no
4 liability to the United States or State or Indian tribe shall be imposed under
5 subparagraph (C) of subsection (a) of this section, where the party sought
6 to be charged has demonstrated that the damages to natural resources
7 complained of were specifically identified as an irreversible and
8 irretrievable commitment of natural resources in an environmental impact
9 statement, or other comparable environment analysis, and the decision to
10 grant a permit or license authorizes such commitment of natural resources,
11 and the facility or project was otherwise operating within the terms of its
12 permit or license, so long as, in the case of damages to an Indian tribe
13 occurring pursuant to a Federal permit or license, the issuance of that
14 permit or license was not inconsistent with the fiduciary duty of the United
15 States with respect to such Indian tribe. The President, or the authorized
16 representative of any State, shall act on behalf of the public as trustee of
17 such natural resources to recover for such damages. Sums recovered by
18 the United States Government as trustee under this subsection shall be
19 retained by the trustee, without further appropriation, for use only to
20 restore, replace, or acquire the equivalent of such natural resources. Sums
21 recovered by a State as trustee under this subsection shall be available for
22 use only to restore, replace, or acquire the equivalent of such natural
23 resources by the State. The measure of damages in any action under
24 subparagraph (C) of subsection (a) shall not be limited by the sums which
25 can be used to restore or replace such resources. There shall be no double
26 recovery under this Act for natural resource damages, including the costs
27 of damage assessment or restoration, rehabilitation, or acquisition for the
28 same release and natural resource. There shall be no recovery under the
29 authority of subparagraph (C) of subsection (a) where such damages and
30 the release of a hazardous substance *or pollutant or contaminant* from
31 which such damages resulted have occurred wholly before the enactment of
32 this Act. [See SRA §404(g) at page 56]

33
34 (2) DESIGNATION OF FEDERAL AND STATE OFFICIALS. —

35
36 (A) FEDERAL. — The President shall designate in the National
37 Contingency Plan published under section 105 of this Act the Federal
38 officials who shall act on behalf of the public as trustees for natural
39 resources under this Act and section 311 of the Federal Water
40 Pollution Control Act. Such officials shall assess damages for injury
41 to, destruction of, or loss of natural resources for purposes of this
42 Act and such section 311 of the Federal Water Pollution Control Act
43 for those resources under their trusteeship and may, upon request of

1 and reimbursement from a State and at the Federal officials'
2 discretion, assess damages for those natural resources under the
3 State's trusteeship.
4

5 (B) STATE. — The Governor of each State shall designate State
6 officials who may act on behalf of the public as trustees for natural
7 resources under this Act and section 311 of the Federal Water
8 Pollution Control Act and shall notify the President of such
9 designations. Such State officials shall assess damages to natural
10 resources for the purposes of this Act and such section 311 for those
11 natural resources under their trusteeship.
12

13 (C) REBUTTABLE PRESUMPTION. — Any determination or
14 assessment of damages to natural resources for the purposes of this
15 Act and section 311 of the Federal Water Pollution Control Act
16 made by a Federal or State trustee in accordance with the regulations
17 promulgated under section 301(c) of this Act shall have the force and
18 effect of a rebuttable presumption on behalf of the trustee in any
19 administrative or judicial proceeding under this Act or section 311
20 of the Federal Water Pollution Control Act.
21

22 (g) FEDERAL AGENCIES. — For provisions relating to Federal agencies, see
23 section 120 of this Act.
24

25 (h) OWNER OR OPERATOR OF VESSEL. — The owner or operator of a
26 vessel shall be liable in accordance with this section, under maritime tort law, and
27 as provided under section 114 of this Act notwithstanding any provision of the
28 Act of March 3, 1851 (46 U.S.C. 183ff) or the absence of any physical damage to
29 the proprietary interest of the claimant.
30

31 (i) APPLICATION OF REGISTERED PESTICIDE PRODUCT. — No person
32 (including the United States or any State or Indian tribe) may recover under the
33 authority of this section for any response costs or damages resulting from the
34 application of a pesticide product registered under the Federal Insecticide,
35 Fungicide, and Rodenticide Act. Nothing in this paragraph shall affect or modify
36 in any way the obligations or liability of any person under any other provision of
37 State or Federal law, including common law, for damages, injury, or loss
38 resulting from a release of any hazardous substance *or pollutant or*
39 *contaminant* or for removal or remedial action or the costs of removal or
40 remedial action of such hazardous substance *or pollutant or contaminant*.
41 [See SRA §404(g) at page 56]
42

(j) OBLIGATIONS OR LIABILITY PURSUANT TO FEDERALLY PERMITTED RELEASE. — Recovery by any person (including the United States or any State or Indian tribe) for response costs or damages resulting from a federally permitted release shall be pursuant to existing law in lieu of this section. Nothing in this paragraph shall affect or modify in any way the obligations or liability of any person under any other provision of State or Federal law, including common law, for damages, injury, or loss resulting from a release of any hazardous substance *or pollutant or contaminant* or for removal or remedial action or the costs of removal or remedial action of such hazardous substance *or pollutant or contaminant*. In addition, costs of response incurred by the Federal Government in connection with a discharge specified in section 101(10)(B) or (C) shall be recoverable in an action brought under section 309(b) of the Clean Water Act. [See SRA §404(g) at page 56]

(k) (1) The liability established by this section or any other law for the owner or operator of a hazardous waste disposal facility which has received a permit under subtitle C of the Solid Waste Disposal Act, shall be transferred to and assumed by the Post-closure Liability Fund established by section 232 of this Act when —

(A) such facility and the owner and operator thereof has complied with the requirements of subtitle C of the Solid Waste Disposal Act and regulations issued thereunder, which may affect the performance of such facility after closure; and

(B) such facility has been closed in accordance with such regulations and the conditions of such permit, and such facility and the surrounding area have been monitored as required by such regulations and permit conditions for a period not to exceed five years after closure to demonstrate that there is no substantial likelihood that any migration offsite or release from confinement of any hazardous substance *or pollutant or contaminant* or other risk to public health or welfare will occur. [See SRA §404(g) at page 56]

(2) Such transfer of liability shall be effective ninety days after the owner or operator of such facility notifies the Administrator of the Environmental Protection Agency (and the State where it has an authorized program under section 3006(b) of the Solid Waste Disposal Act) that the conditions imposed by this subsection have been satisfied. If within such ninety-day period the Administrator of the Environmental Protection Agency or such State determines that any such facility has not complied with all the conditions imposed by this subsection or that insufficient

1 information has been provided to demonstrate such compliance, the
2 Administrator or such State shall so notify the owner and operator of such
3 facility and the administrator of the Fund established by section 232 of this
4 Act, and the owner and operator of such facility shall continue to be liable
5 with respect to such facility under this section and other law until such time
6 as the Administrator and such State determines that such facility has
7 complied with all conditions imposed by this subsection. A determination
8 by the Administrator or such State that a facility has not complied with all
9 conditions imposed by this subsection or that insufficient information has
10 been supplied to demonstrate compliance, shall be a final administrative
11 action for purposes of judicial review. A request for additional
12 information shall state in specific terms the data required.

13
14 (3) In addition to the assumption of liability of owners and operators under
15 paragraph (1) of this subsection, the Post-closure Liability Fund established
16 by section 232 of this Act may be used to pay costs of monitoring and care
17 and maintenance of a site incurred by other persons after the period of
18 monitoring required by regulations under subtitle C of the Solid Waste
19 Disposal Act for hazardous waste disposal facilities meeting the conditions
20 of paragraph (1) of this subsection.

21
22 (4) (A) Not later than one year after the date of enactment of this Act,
23 the Secretary of the Treasury shall conduct a study and shall submit a
24 report thereon to the Congress on the feasibility of establishing or
25 qualifying an optional system of private insurance for post closure
26 financial responsibility for hazardous waste disposal facilities to
27 which this subsection applies. Such study shall include a specification
28 of adequate and realistic minimum standards to assure that any such
29 privately placed insurance will carry out the purposes of this
30 subsection in a reliable, enforceable, and practical manner. Such a
31 study shall include an examination of the public and private
32 incentives, programs, and actions necessary to make privately placed
33 insurance a practical and effective option to the financing system for
34 the Post-closure Liability Fund provided in title II of this Act.

35
36 (B) Not later than eighteen months after the date of enactment of this
37 Act and after a public hearing, the President shall by rule determine
38 whether or not it is feasible to establish or qualify an optional system
39 of private insurance for post closure financial responsibility for
40 hazardous waste disposal facilities to which this subsection applies.
41 If the President determines the establishment or qualification of such
42 a system would be infeasible, he shall promptly publish an
43 explanation of the reasons for such a determination. If the President

determines the establishment or qualification of such a system would be feasible, he shall promptly publish notice of such determination. Not later than six months after an affirmative determination under the preceding sentence and after a public hearing, the President shall by rule promulgate adequate and realistic minimum standards which must be met by any such privately placed insurance, taking into account the purposes of this Act and this subsection. Such rules shall also specify reasonably expeditious procedures by which privately placed insurance plans can qualify as meeting such minimum standards.

(C) In the event any privately placed insurance plan qualifies under subparagraph (B), any person enrolled in, and complying with the terms of, such plan shall be excluded from the provisions of paragraphs (1), (2), and (3) of this subsection and exempt from the requirements to pay any tax or fee to the Post-closure Liability Fund under title II of this Act.

(D) The President may issue such rules and take such other actions as are necessary to effectuate the purposes of this paragraph.

(5) **SUSPENSION OF LIABILITY TRANSFER.** — Notwithstanding paragraphs (1), (2), (3), and (4) of this subsection and subsection (j) of section 111 of this Act, no liability shall be transferred to or assumed by the Post-Closure Liability Trust Fund established by section 232 of this Act prior to completion of the study required under paragraph (6) of this subsection, transmission of a report of such study to both Houses of Congress, and authorization of such a transfer or assumption by Act of Congress following receipt of such study and report.

(6) **STUDY OF OPTIONS FOR POST-CLOSURE PROGRAM.** —

(A) **STUDY.** — The Comptroller General shall conduct a study of options for a program for the management of the liabilities associated with hazardous waste treatment, storage, and disposal sites after their closure which complements the policies set forth in the Hazardous and Solid Waste Amendments of 1984 and assures the protection of human health and the environment.

(B) **PROGRAM ELEMENTS.** — The program referred to in subparagraph (A) shall be designed to assure each of the following:

1 (i) Incentives are created and maintained for the safe
2 management and disposal of hazardous wastes so as to assure
3 protection of human health and the environment.
4

5 (ii) Members of the public will have reasonable confidence
6 that hazardous wastes will be managed and disposed of safely
7 and that resources will be available to address any problems
8 that may arise and to cover costs of long-term monitoring,
9 care, and maintenance of such sites.
10

11 (iii) Persons who are or seek to become owners and operators
12 of hazardous waste disposal facilities will be able to manage
13 their potential future liabilities and to attract the investment
14 capital necessary to build, operate, and close such facilities in a
15 manner which assures protection of human health and the
16 environment.
17

18 (C) ASSESSMENTS. — The study under this paragraph shall
19 include assessments of treatment, storage, and disposal facilities
20 which have been or are likely to be issued a permit under section
21 3005 of the Solid Waste Disposal Act and the likelihood of future
22 insolvency on the part of owners and operators of such facilities.
23 Separate assessments shall be made for different classes of facilities
24 and for different classes of land disposal facilities and shall include
25 but not be limited to —
26

27 (i) the current and future financial capabilities of facility
28 owners and operators;
29

30 (ii) the current and future costs associated with facilities,
31 including the costs of routine monitoring and maintenance,
32 compliance monitoring, corrective action, natural resource
33 damages, and liability for damages to third parties; and
34

35 (iii) the availability of mechanisms by which owners and
36 operators of such facilities can assure that current and future
37 costs, including post-closure costs, will be financed.
38

39 (D) PROCEDURES. — In carrying out the responsibilities of this
40 paragraph, the Comptroller General shall consult with the
41 Administrator, the Secretary of Commerce, the Secretary of the
42 Treasury, and the heads of other appropriate Federal agencies.
43

1 (E) CONSIDERATION OF OPTIONS. — In conducting the study
2 under this paragraph, the Comptroller General shall consider various
3 mechanisms and combinations of mechanisms to complement the
4 policies set forth in the Hazardous and Solid Waste Amendments of
5 1984 to serve the purposes set forth in subparagraph (B) and to
6 assure that the current and future costs associated with hazardous
7 waste facilities, including post-closure costs, will be adequately
8 financed and, to the greatest extent possible, borne by the owners and
9 operators of such facilities. Mechanisms to be considered include,
10 but are not limited to —

11
12 (i) revisions to closure, post-closure, and financial
13 responsibility requirements under subtitles C and I of the Solid
14 Waste Disposal Act;

15
16 (ii) voluntary risk pooling by owners and operators;

17
18 (iii) legislation to require risk pooling by owners and
19 operators;

20
21 (iv) modification of the Post-Closure Liability Trust Fund
22 previously established by section 232 of this Act, and the
23 conditions for transfer of liability under this subsection,
24 including limiting the transfer of some or all liability under
25 this subsection only in the case of insolvency of owners and
26 operators;

27
28 (v) private insurance;

29
30 (vi) insurance provided by the Federal Government;

31
32 (vii) coinsurance, reinsurance, or pooled-risk insurance,
33 whether provided by the private sector or provided or assisted
34 by the Federal Government; and

35
36 (viii) creation of a new program to be administered by a new
37 or existing Federal agency or by a federally chartered
38 corporation.

39
40 (F) RECOMMENDATIONS. —The Comptroller General shall
41 consider options for funding any program under this section and
42 shall, to the extent necessary, make recommendations to the

appropriate committees of Congress for additional authority to implement such program.

(I) FEDERAL LIEN. —

(1) IN GENERAL. — All costs and damages for which a person is liable to the United States under subsection (a) of this section (other than the owner or operator of a vessel under paragraph (1) of subsection (a)) shall constitute a lien in favor of the United States upon all real property and rights to such property which —

(A) belong to such person; and

(B) are subject to or affected by a removal or remedial action.

(2) DURATION. — The lien imposed by this subsection shall arise at the later of the following:

(A) The time costs are first incurred by the United States with respect to a response action under this Act.

(B) The time that the person referred to in paragraph (1) is provided (by certified or registered mail) written notice of potential liability.

Such lien shall continue until the liability for the costs (or a judgment against the person arising out of such liability) is satisfied or becomes unenforceable through operation of the statute of limitations provided in section 113.

(3) NOTICE AND VALIDITY. — The lien imposed by this subsection shall be subject to the rights of any purchaser, holder of a security interest, or judgment lien creditor whose interest is perfected under applicable State law before notice of the lien has been filed in the appropriate office within the State (or county or other governmental subdivision), as designated by State law, in which the real property subject to the lien is located. Any such purchaser, holder of a security interest, or judgment lien creditor shall be afforded the same protections against the lien imposed by this subsection as are afforded under State law against a judgment lien which arises out of an unsecured obligation and which arises as of the time of the filing of the notice of the lien imposed by this subsection. If the State has not by law designated one office for the receipt of such notices of liens, the notice shall be filed in the office of the clerk of the United States district court for the district in which the real property is located. For purposes of

1 this subsection, the terms "purchaser" and "security interest" shall have the
2 definitions provided under section 6323(h) of the Internal Revenue Code of
3 1954.

4
5 (4) ACTION IN REM. — The costs constituting the lien may be recovered
6 in an action in rem in the United States district court for the district in
7 which the removal or remedial action is occurring or has occurred.
8 Nothing in this subsection shall affect the right of the United States to bring
9 an action against any person to recover all costs and damages for which
10 such person is liable under subsection (a) of this section.

11
12 (m) MARITIME LIEN. — All costs and damages for which the owner or
13 operator of a vessel is liable under subsection (a)(1) with respect to a release or
14 threatened release from such vessel shall constitute a maritime lien in favor of the
15 United States on such vessel. Such costs may be recovered in an action in
16 rem in the district court of the United States for the district in which the vessel
17 may be found. Nothing in this subsection shall affect the right of the United
18 States to bring an action against the owner or operator of such vessel in any court
19 of competent jurisdiction to recover such costs.

20
21 (n) *PROSPECTIVE PURCHASER AND WINDFALL LIEN.* — *Where*
22 *there are unrecovered response costs for which an owner of a facility*
23 *is not liable by operation of subsection 107(a)(5)(C) of this Act, and*
24 *a response action for which there are unrecovered costs inures to the*
25 *benefit of such owner, the United States shall have a lien upon the*
26 *facility for such unrecovered costs. Such lien —*

27
28 *(1) shall not exceed the increase in fair market value of the*
29 *property attributable to the response action at the time of a*
30 *subsequent sale or other disposition of property;*

31
32 *(2) shall be subject to the requirements for notice and validity*
33 *established in paragraph (3) of subsection (l) of this section;*
34 *and*

35
36 *(3) shall continue until the earlier of satisfaction of the lien, or*
37 *recovery of all response costs incurred at the facility. [See SRA*
38 *§403(b) at page 51]*

FINANCIAL RESPONSIBILITY

1
2
3 SEC. 108 (a) (1) The owner or operator of each vessel (except a non-self-
4 propelled barge that does not carry hazardous substances as cargo) over
5 three hundred gross tons that uses any port or place in the United States or
6 the navigable waters or any offshore facility, shall establish and maintain,
7 in accordance with regulations promulgated by the President, evidence of
8 financial responsibility of \$300 per gross ton (or for a vessel carrying
9 hazardous substances as cargo, or \$5,000,000, whichever is greater) to
10 cover the liability prescribed under paragraph (1) of section 107(a) of this
11 Act. Financial responsibility may be established by any one, or any
12 combination, of the following: insurance, guarantee, surety bond, or
13 qualification as a self-insurer. Any bond filed shall be issued by a bonding
14 company authorized to do business in the United States. In cases where an
15 owner or operator owns, operates, or charters more than one vessel subject
16 to this subsection, evidence of financial responsibility need be established
17 only to meet the maximum liability applicable to the largest of such vessels.
18

19 (2) The Secretary of the Treasury shall withhold or revoke the clearance
20 required by section 4197 of the Revised Statutes of the United States of any
21 vessel subject to this subsection that does not have certification furnished by
22 the President that the financial responsibility provisions of paragraph (1) of
23 this subsection have been complied with.
24

25 (3) The Secretary of Transportation, in accordance with regulations issued
26 by him, shall (A) deny entry to any port or place in the United States or
27 navigable waters to, and (B) detain at the port or place in the United States
28 from which it is about to depart for any other port or place in the United
29 States, any vessel subject to this subsection that, upon request, does not
30 produce certification furnished by the President that the financial
31 responsibility provisions of paragraph (1) of this subsection have been
32 complied with.
33

34 (4) In addition to the financial responsibility provisions of paragraph (1) of
35 this subsection, the President shall require additional evidence of financial
36 responsibility for incineration vessels in such amounts, and to cover such
37 liabilities recognized by law, as the President deems appropriate, taking
38 into account the potential risks posed by incineration and transport for
39 incineration, and any other factors deemed relevant.
40

1 (b) ESTABLISHMENT AND MAINTENANCE BY OWNER OR OPERATOR
2 OF PRODUCTION, ETC., FACILITIES; AMOUNT; ADJUSTMENT;
3 CONSOLIDATED FORM OF RESPONSIBILITY; COVERAGE OF MOTOR
4 CARRIERS.
5

6 (1) Beginning not earlier than five years after the date of enactment of this
7 Act, the President shall promulgate requirements (for facilities in addition
8 to those under subtitle C of the Solid Waste Disposal Act and other Federal
9 law) that classes of facilities establish and maintain evidence of financial
10 responsibility consistent with the degree and duration of risk associated
11 with the production, transportation, treatment, storage, or disposal of
12 hazardous substances. Not later than three years after the date of
13 enactment of the Act, the President shall identify those classes for which
14 requirements will be first developed and publish notice of such
15 identification in the Federal Register. Priority in the development of such
16 requirements shall be accorded to those classes of facilities, owners, and
17 operators which the President determines present the highest level of risk
18 of injury.
19

20 (2) The level of financial responsibility shall be initially established, and,
21 when necessary, adjusted to protect against the level of risk which the
22 President in his discretion believes is appropriate based on the payment
23 experience of the Fund, commercial insurers, courts settlements and
24 judgments, and voluntary claims satisfaction. To the maximum extent
25 practicable, the President shall cooperate with and seek the advice of the
26 commercial insurance industry in developing financial responsibility
27 requirements. Financial responsibility may be established by any one, or
28 any combination, of the following: insurance, guarantee, surety bond,
29 letter of credit, or qualification as a self-insurer. In promulgating
30 requirements under this section, the President is authorized to specify
31 policy or other contractual terms, conditions, or defenses which are
32 necessary, or which are unacceptable, in establishing such evidence of
33 financial responsibility in order to effectuate the purposes of this Act.
34

35 (3) Regulations promulgated under this subsection shall incrementally
36 impose financial responsibility requirements as quickly as can reasonably
37 be achieved but in no event more than 4 years after the date of
38 promulgation. Where possible, the level of financial responsibility which
39 the President believes appropriate as a final requirement shall be achieved
40 through incremental, annual increases in the requirements.
41

42 (4) Where a facility is owned or operated by more than one person,
43 evidence of financial responsibility covering the facility may be established

1 and maintained by one of the owners or operators, or, in consolidated
2 form, by or on behalf of two or more owners or operators. When
3 evidence of financial responsibility is established in a consolidated form,
4 the proportional share of each participant shall be shown. The evidence
5 shall be accompanied by a statement authorizing the applicant to act for and
6 in behalf of each participant in submitting and maintaining the evidence of
7 financial responsibility.

8
9 (5) The requirements for evidence of financial responsibility for motor
10 carriers covered by this Act shall be determined under section 30 of the
11 Motor Carrier Act of 1980, Public Law 96-296.

12
13 (c) DIRECT ACTION. —

14
15 (1) RELEASES FROM VESSELS. — In the case of a release or threatened
16 release from a vessel, any claim authorized by section 107 or 111 may be
17 asserted directly against any guarantor providing evidence of financial
18 responsibility for such vessel under subsection (a). In defending such a
19 claim, the guarantor may invoke all rights and defenses which would be
20 available to the owner or operator under this title. The guarantor may also
21 invoke the defense that the incident was caused by the willful misconduct of
22 the owner or operator, but the guarantor may not invoke any other defense
23 that the guarantor might have been entitled to invoke in a proceeding
24 brought by the owner or operator against him.

25
26 (2) RELEASES FROM FACILITIES. — In the case of a release or
27 threatened release from a facility, any claim authorized by section 107 or
28 111 may be asserted directly against any guarantor providing evidence of
29 financial responsibility for such facility under subsection (b), if the person
30 liable under section 107 is in bankruptcy, reorganization, or arrangement
31 pursuant to the Federal Bankruptcy Code, or if, with reasonable diligence,
32 jurisdiction in the Federal courts cannot be obtained over a person liable
33 under section 107 who is likely to be solvent at the time of judgment. In
34 the case of any action pursuant to this paragraph, the guarantor shall be
35 entitled to invoke all rights and defenses which would have been available
36 to the person liable under section 107 if any action had been brought
37 against such person by the claimant and all rights and defenses which would
38 have been available to the guarantor if an action had been brought against
39 the guarantor by such person.
40

1 (d) LIMITATION OF GUARANTOR LIABILITY. —
2

3 (1) TOTAL LIABILITY. — The total liability of any guarantor in a direct
4 action suit brought under this section shall be limited to the aggregate
5 amount of the monetary limits of the policy of insurance, guarantee, surety
6 bond, letter of credit, or similar instrument obtained from the guarantor
7 by the person subject to liability under section 107 for the purpose of
8 satisfying the requirement for evidence of financial responsibility.
9

10 (2) OTHER LIABILITY. — Nothing in this subsection shall be construed
11 to limit any other State or Federal statutory, contractual, or common law
12 liability of a guarantor, including, but not limited to, the liability of such
13 guarantor for bad faith either in negotiating or in failing to negotiate the
14 settlement of any claim. Nothing in this subsection shall be construed,
15 interpreted, or applied to diminish the liability of any person under section
16 107 of this Act or other applicable law.

CIVIL PENALTIES AND AWARDS

SEC. 109. CIVIL PENALTIES AND AWARDS.

(a) CLASS I ADMINISTRATIVE PENALTY. —

(1) VIOLATIONS. — A civil penalty of not more than \$25,000 per violation may be assessed by the President in the case of any of the following —

(A) A violation of the requirements of section 103(a) or (b) (relating to notice).

(B) A violation of the requirements of section 103(d)(2) (relating to destruction of records, etc.).

(C) A violation of the requirements of section 108 (relating to financial responsibility, etc.), the regulations issued under section 108, or with any denial or detention order under section 108.

(D) A violation of an order under section 122(d)(3) (relating to settlement agreements for action under section 104(b)).

(E) Any failure or refusal referred to in section 122(l) (relating to violations of administrative orders, consent decrees, or agreements under section 120).

(2) NOTICE AND HEARINGS. — No civil penalty may be assessed under this subsection unless the person accused of the violation is given notice and opportunity for a hearing with respect to the violation.

(3) DETERMINING AMOUNT. — In determining the amount of any penalty assessed pursuant to this subsection, the President shall take into account the nature, circumstances, extent and gravity of the violation or violations and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require.

(4) REVIEW. — Any person against whom a civil penalty is assessed under this subsection may obtain review thereof in the appropriate district court of the United States by filing a notice of appeal in such court within 30 days from the date of such order and by simultaneously sending a copy

1 of such notice by certified mail to the President. The President shall
2 promptly file in such court a certified copy of the record upon which such
3 violation was found or such penalty imposed. If any person fails to pay an
4 assessment of a civil penalty after it has become a final and unappealable
5 order or after the appropriate court has entered final judgment in favor of
6 the United States, the President may request the Attorney General of the
7 United States to institute a civil action in an appropriate district court of the
8 United States to collect the penalty, and such court shall have jurisdiction to
9 hear and decide any such action. In hearing such action, the court shall
10 have authority to review the violation and the assessment of the civil
11 penalty on the record.
12

13 (5) SUBPOENAS. — The President may issue subpoenas for the attendance
14 and testimony of witnesses and the production of relevant papers, books, or
15 documents in connection with hearings under this subsection. In case of
16 contumacy or refusal to obey a subpoena issued pursuant to this paragraph
17 and served upon any person, the district court of the United States for any
18 district in which such person is found, resides, or transacts business, upon
19 application by the United States and after notice to such person, shall have
20 jurisdiction to issue an order requiring such person to appear and give
21 testimony before the administrative law judge or to appear and produce
22 documents before the administrative law judge, or both, and any failure to
23 obey such order of the court may be punished by such court as a contempt
24 thereof.
25

26 (b) CLASS II ADMINISTRATIVE PENALTY. — A civil penalty of not more
27 than \$25,000 per day for each day during which the violation continues may be
28 assessed by the President in the case of any of the following —
29

30 (1) A violation of the notice requirements of section 103(a) or (b).
31

32 (2) A violation of section 103(d)(2) (relating to destruction of records,
33 etc.).
34

35 (3) A violation of the requirements of section 108 (relating to financial
36 responsibility, etc.), the regulations issued under section 108, or with any
37 denial or detention order under section 108.
38

39 (4) A violation of an order under section 122(d)(3) (relating to settlement
40 agreements for action under section 104(b)).
41

1 (5) Any failure or refusal referred to in section 122(l) (relating to
2 violations of administrative orders, consent decrees, or agreements under
3 section 120).
4

5 In the case of a second or subsequent violation the amount of such penalty may be
6 not more than \$75,000 for each day during which the violation continues. Any
7 civil penalty under this subsection shall be assessed and collected in the same
8 manner, and subject to the same provisions, as in the case of civil penalties
9 assessed and collected after notice and opportunity for hearing on the record in
10 accordance with section 554 of title 5 of the United States Code. In any
11 proceeding for the assessment of a civil penalty under this subsection the
12 President may issue subpoenas for the attendance and testimony of witnesses and
13 the production of relevant papers, books, and documents and may promulgate
14 rules for discovery procedures. Any person who requested a hearing with
15 respect to a civil penalty under this subsection and who is aggrieved by an order
16 assessing the civil penalty may file a petition for judicial review of such order
17 with the United States Court of Appeals for the District of Columbia Circuit or
18 for any other circuit in which such person resides or transacts business. Such a
19 petition may only be filed within the 30-day period beginning on the date the
20 order making such assessment was issued.
21

22 (c) JUDICIAL ASSESSMENT. — The President may bring an action in the
23 United States district court for the appropriate district to assess and collect a
24 penalty of not more than \$25,000 per day for each day during which the violation
25 (or failure or refusal) continues in the case of any of the following —
26

27 (1) A violation of the notice requirements of section 103(a) or (b).
28

29 (2) A violation of section 103(d)(2) (relating to destruction of records,
30 etc.).
31

32 (3) A violation of the requirements of section 108 (relating to financial
33 responsibility, etc.), the regulations issued under section 108, or with any
34 denial or detention order under section 108.
35

36 (4) A violation of an order under section 122(d)(3) (relating to settlement
37 agreements for action under section 104(b)).
38

39 (5) Any failure or refusal referred to in section 122(l) (relating to
40 violations of administrative orders, consent decrees, or agreements under
41 section 120)).
42

1 In the case of a second or subsequent violation (or failure or refusal), the amount
2 of such penalty may be not more than \$75,000 for each day during which the
3 violation (or failure or refusal) continues. For additional provisions providing
4 for judicial assessment of civil penalties for failure to comply with a request or
5 order under section 104(e) (relating to information gathering and access
6 authorities), see section 104(e).

7
8 (d) AWARDS. — The President may pay an award of up to \$10,000 to any
9 individual who provides information leading to the arrest and conviction of any
10 person for a violation subject to a criminal penalty under this Act, including any
11 violation of section 103 and any other violation referred to in this section. The
12 President shall, by regulation, prescribe criteria for such an award and may pay
13 any award under this subsection from the Fund, as provided in section 111.

14
15 (e) PROCUREMENT PROCEDURES. — Notwithstanding any other provision
16 of law, any executive agency may use competitive procedures or procedures
17 other than competitive procedures to procure the services of experts for use in
18 preparing or prosecuting a civil or criminal action under this Act, whether or not
19 the expert is expected to testify at trial. The executive agency need not provide
20 any written justification for the use of procedures other than competitive
21 procedures when procuring such expert services under this Act and need not
22 furnish for publication in the Commerce Business Daily or otherwise any notice
23 of solicitation or synopsis with respect to such procurement.

24
25 (f) SAVINGS CLAUSE. — Action taken by the President pursuant to this section
26 shall not affect or limit the President's authority to enforce any provisions of this
27 Act.

EMPLOYEE PROTECTION

1
2
3 SEC. 110. (a) No person shall fire or in any other way discriminate against, or
4 cause to be fired or discriminated against, any employee or any authorized
5 representative of employees by reason of the fact that such employee or
6 representative has provided information to a State or to the Federal Government,
7 filed, instituted, or caused to be filed or instituted any proceeding under this Act,
8 or has testified or is about to testify in any proceeding resulting from the
9 administration or enforcement of the provisions of this Act.

10
11 (b) Any employee or a representative of employees who believes that he has been
12 fired or otherwise discriminated against by any person in violation of subsection
13 (a) of this section may, within thirty days after such alleged violation occurs,
14 apply to the Secretary of Labor for a review of such firing or alleged
15 discrimination. A copy of the application shall be sent to such person, who shall
16 be the respondent. Upon receipt of such application, the Secretary of Labor shall
17 cause such investigation to be made as he deems appropriate. Such investigation
18 shall provide an opportunity for a public hearing at the request of any party to
19 such review to enable the parties to present information relating to such alleged
20 violation. The parties shall be given written notice of the time and place of the
21 hearing at least five days prior to the hearing. Any such hearing shall be of
22 record and shall be subject to section 554 of title 5, United States Code. Upon
23 receiving the report of such investigation, the Secretary of Labor shall make
24 findings of fact. If he finds that such violation did occur, he shall issue a
25 decision, incorporating an order therein and his findings, requiring the party
26 committing such violation to take such affirmative action to abate the violation as
27 the Secretary of Labor deems appropriate, including, but not limited to, the
28 rehiring or reinstatement of the employee or representative of employees to his
29 former position with compensation. If he finds that there was no such violation,
30 he shall issue an order denying the application. Such order issued by the
31 Secretary of Labor under this subparagraph shall be subject to judicial review in
32 the same manner as orders and decisions are subject to judicial review under this
33 Act.

34
35 (c) Whenever an order is issued under this section to abate such violation, at the
36 request of the applicant a sum equal to the aggregate amount of all costs and
37 expenses (including the attorney's fees) determined by the Secretary of Labor to
38 have been reasonably incurred by the applicant for, or in connection with, the
39 institution and prosecution of such proceedings, shall be assessed against the
40 person committing such violation.
41

1 (d) This section shall have no application to any employee who acting without
2 discretion from his employer (or his agent) deliberately violates any requirement
3 of this Act.

4
5 (e) The President shall conduct continuing evaluations of potential loss of shifts of
6 employment which may result from the administration or enforcement of the
7 provisions of this Act, including, where appropriate, investigating threatened
8 plant closures or reductions in employment allegedly resulting from such
9 administration or enforcement. Any employee who is discharged, or laid off,
10 threatened with discharge or layoff, or otherwise discriminated against by any
11 person because of the alleged results of such administration or enforcement, or
12 any representative of such employee, may request the President to conduct a full
13 investigation of the matter and, at the request of any party, shall hold public
14 hearings, require the parties, including the employer involved, to present
15 information relating to the actual or potential effect of such administration or
16 enforcement on employment and any alleged discharge, layoff, or other
17 discrimination, and the detailed reasons or justification therefore. Any such
18 hearing shall be of record and shall be subject to section 554 of title 5, United
19 States Code. Upon receiving the report of such investigation, the President shall
20 make findings of fact as to the effect of such administration or enforcement on
21 employment and on the alleged discharge, layoff, or discrimination and shall
22 make such recommendations as he deems appropriate. Such report, findings, and
23 recommendations shall be available to the public. Nothing in this subsection shall
24 be construed to require or authorize the President or any State to modify or
25 withdraw any action, standard, limitation, or any other requirement of this Act.

USES OF FUND

SEC. 111. (a) IN GENERAL. — For the purposes specified in this section there is authorized to be appropriated from the Hazardous Substance Superfund established under subchapter A of chapter 98 of the Internal Revenue Code of 1986 not more than ~~[\$8,500,000,000 for the 5-year period beginning on the date of enactment of the Superfund Amendments and Reauthorization Act of 1986, and not more than \$5,100,000,000 for the period commencing October 1, 1991, and ending September 30, 1994,]~~⁹ *\$9,600,000,000 for the period commencing October 1, 1994 and ending September 30, 1999* and such sums shall remain available until expended. The preceding sentence constitutes a specific authorization for the funds appropriated under title II of Public Law 99-160 (relating to payment to the Hazardous Substances Trust Fund). The President shall use the money in the Fund for the following purposes: [See SRA §701 at page 108]

(1) Payment of governmental response costs incurred pursuant to section 104 of this title, including costs incurred pursuant to the Intervention on the High Seas Act.

(2) Payment of any claim for necessary response costs incurred by any other person as a result of carrying out the national contingency plan established under section 311(c) of the Clean Water Act and amended by section 105 of this title: *Provided, however,* That such costs must be approved under said plan and certified by the responsible Federal official.

(3) Payment of any claim authorized by subsection (b) of this section and finally decided pursuant to section 112 of this title, including those costs set out in subsection 112(c)(3) of this title.

(4) Payment of costs specified under subsection (c) of this section.

(5) GRANTS FOR TECHNICAL ASSISTANCE. —The cost of grants under section 117(e) (relating to public participation grants for technical assistance).

(6) LEAD CONTAMINATED SOIL. —Payment of not to exceed

⁹Section 701 of the Administration bill (page 108) misquotes Section 111(a) of CERCLA by stating that the highlighted phrase reads: “\$8,500,000,000 for the 5-year period beginning on *October 17, 1986*, and not more than \$5,100,000,000 for the period commencing October 1, 1991, and ending September 30, 1994.” The italicized portion of this phrase is different from what is actually in CERCLA.

1 \$15,000,000 for the costs of a pilot program for removal,
2 decontamination, or other action with respect to lead-contaminated soil in
3 one to three different metropolitan areas.

4
5 **(7) ALTERNATIVE OR INNOVATIVE TREATMENT**
6 **TECHNOLOGIES. —**

7
8 *(A) When a party potentially liable under this Act*
9 *undertakes a response action pursuant to an administrative*
10 *order or consent decree, and employs an alternative or*
11 *innovative technology that fails to achieve a level of*
12 *response required under this Act, the Administrator may*
13 *use the Fund to reimburse no more than fifty percent of*
14 *response costs incurred by the potentially liable party in*
15 *taking other actions approved by the Administrator to*
16 *achieve these required levels of response. The*
17 *Administrator shall issue guidance on the procedures and*
18 *criteria to be used in determining whether a remedial*
19 *technology constitutes an alternative or innovative*
20 *technology for purposes of this subsection, and the*
21 *appropriate level of funding for response activities that*
22 *are necessary to achieve a level of response required under*
23 *this Act. The Administrator shall review and update such*
24 *guidance, as appropriate.*¹⁰ [See SRA §604 at page 99]

25
26 **(8) ORPHAN SHARE FUNDING. — Payment of orphan shares**
27 **pursuant to section 122a(e) of this Act. [See SRA §702 at page 108]**

28
29 The President shall not pay for any administrative costs or expenses out of the
30 Fund unless such costs and expenses are reasonably necessary for and incidental
31 to the implementation of this title.

- 32
33 (b) (1) IN GENERAL. — Claims asserted and compensable but unsatisfied
34 under provisions of section 311 of the Clean Water Act, which are
35 modified by section 304 of this Act may be asserted against the Fund under
36 this title; and other claims resulting from a release or threat of release of a
37 hazardous substance from a vessel or a facility may be asserted against the
38 Fund under this title for injury to, or destruction or loss of, natural
39 resources, including cost for damage assessment: *Provided, however, That*
40 *any such claim may be asserted only by the President, as trustee, for*

¹⁰Section 604 of the Administration bill (page 99) adds a new Section 111(a)(7)(A) to CERCLA without any indication that there is to be a new subparagraph (B).

1 natural resources over which the United States has sovereign rights, or
2 natural resources within the territory or the fishery conservation zone of
3 the United States to the extent they are managed or protected by the United
4 States, or by any State for natural resources within the boundary of that
5 State belonging to, managed by, controlled by, or appertaining to the State,
6 or by any Indian tribe or by the United States acting on behalf of any
7 Indian tribe for natural resources belonging to, managed by, controlled by,
8 or appertaining to such tribe, or held in trust for the benefit of such tribe,
9 or belonging to a member of such tribe if such resources are subject to a
10 trust restriction on alienation.

11
12 (2) LIMITATION ON PAYMENT OF NATURAL RESOURCE
13 CLAIMS. —

14
15 (A) GENERAL REQUIREMENTS. —No natural resource claim
16 may be paid from the Fund unless the President determines that the
17 claimant has exhausted all administrative and judicial remedies to
18 recover the amount of such claim from persons who may be liable
19 under section 107.

20
21 (B) DEFINITION. —As used in this paragraph, the term "natural
22 resource claim" means any claim for injury to, or destruction or loss
23 of, natural resources. The term does not include any claim for the
24 costs of natural resource damage assessment.

25
26 (c) Uses of the Fund under subsection (a) of this section include —

27
28 (1) The costs of assessing both short-term and long-term injury to,
29 destruction of, or loss of any natural resources resulting from a release of
30 a hazardous substance.

31
32 (2) The costs of Federal or State or Indian tribe efforts in the restoration,
33 rehabilitation, or replacement or acquiring the equivalent of any natural
34 resources injured, destroyed, or lost as a result of a release of a hazardous
35 substance.

36
37 (3) Subject to such amounts as are provided in appropriation Acts, the costs
38 of a program to identify, investigate, and take enforcement and abatement
39 action against releases of hazardous substances.

40
41 (4) Any costs incurred in accordance with subsection (m) of this section
42 (relating to ATSDR) and section 104(i), including the costs of
43 epidemiologic and laboratory studies, health assessments, preparation of

1 toxicologic profiles, development and maintenance of a registry of persons
2 exposed to hazardous substances to allow long-term health effect studies,
3 and diagnostic services not otherwise available to determine whether
4 persons in populations exposed to hazardous substances in connection with
5 a release or a suspected release are suffering from long-latency diseases.

6
7 (5) Subject to such amounts as are provided in appropriation Acts, the costs
8 of providing equipment and similar overhead, related to the purposes of
9 this Act and section 311 of the Clean Water Act, and needed to supplement
10 equipment and services available through contractors or other non-Federal
11 entities, and of establishing and maintaining damage assessment capability,
12 for any Federal agency involved in strike forces, emergency task forces, or
13 other response teams under the national contingency plan.

14
15 (6) Subject to such amounts as are provided in appropriation Acts, the costs
16 of a program to protect the health and safety of employees involved in
17 response to hazardous substance releases. Such program shall be developed
18 jointly by the Environmental Protection Agency, the Occupational Safety
19 and Health Administration, and the National Institute for Occupational
20 Safety and Health and shall include, but not be limited to, measures for
21 identifying and assessing hazards to which persons engaged in removal,
22 remedy, or other response to hazardous substances may be exposed,
23 methods to protect workers from such hazards, and necessary regulatory
24 and enforcement measures to assure adequate protection of such employees.

25
26 (7) EVALUATION COSTS UNDER PETITION PROVISIONS OF
27 SECTION 105(d). —Costs incurred by the President in evaluating facilities
28 pursuant to petitions under section 105(d) (relating to petitions for
29 assessment of release).

30
31 (8) CONTRACT COSTS UNDER SECTION 104(a)(1). —The costs of
32 contracts or arrangements entered into under section 104(a)(1) to oversee
33 and review the conduct of remedial investigations and feasibility studies
34 undertaken by persons other than the President and the costs of appropriate
35 Federal and State oversight of remedial activities at National Priorities List
36 sites resulting from consent orders or settlement agreements.

37
38 (9) ACQUISITION COSTS UNDER SECTION 104(j). —The costs
39 incurred by the President in acquiring real estate or interests in real estate
40 under section 104(j) (relating to acquisition of property).

41
42 (10) RESEARCH, DEVELOPMENT, AND DEMONSTRATION COSTS
43 UNDER SECTION 311. —The cost of carrying out section 311 (relating

1 to research, development, and demonstration), except that the amounts
2 available for such purposes shall not exceed the amounts specified in
3 subsection (n) of this section.

4
5 (11) LOCAL GOVERNMENT REIMBURSEMENT. —Reimbursements to
6 local governments under section 123, except that during the 8 fiscal year
7 period beginning October 1, 1986, not more than 0.1 percent of the total
8 amount appropriated from the Fund may be used for such reimbursements.

9
10 (12) WORKER TRAINING AND EDUCATION GRANTS. —The costs of
11 grants under section 126(g) of the Superfund Amendments and
12 Reauthorization Act of 1986 for training and education of workers to the
13 extent that such costs do not exceed \$20,000,000 for each of the fiscal years
14 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994.

15
16 (13) AWARDS UNDER SECTION 109. —The costs of any awards
17 granted under section 109(d).

18
19 (14) LEAD POISONING STUDY. —The cost of carrying out the study
20 under subsection (f) of section 118 of the Superfund Amendments and
21 Reauthorization Act of 1986 (relating to lead poisoning in children).

22
23 (d) (1) No money in the Fund may be used under subsection (c)(1) and (2) of
24 this section, nor for the payment of any claim under subsection (b) of this
25 section, where the injury, destruction, or loss of natural resources and the
26 release of a hazardous substance from which such damages resulted have
27 occurred wholly before the enactment of this Act.

28
29 (2) No money in the Fund may be used for the payment of any claim under
30 subsection (b) of this section where such expenses are associated with
31 injury or loss resulting from long-term exposure to ambient concentrations
32 of air pollutants from multiple or diffuse sources.

33
34 (e) (1) Claims against or presented to the Fund shall not be valid or paid in
35 excess of the total money in the Fund at any one time. Such claims become
36 valid only when additional money is collected, appropriated, or otherwise
37 added to the Fund. Should the total claims outstanding at any time exceed
38 the current balance of the Fund, the President shall pay such claims, to the
39 extent authorized under this section, in full in the order in which they were
40 finally determined.

41
42 (2) In any fiscal year, 85 percent of the money credited to the Fund under
43 title II of this Act shall be available only for the purposes specified in

paragraphs (1), (2), and (4) of subsection (a) of this section. No money in the Fund may be used for the payment of any claim under subsection (a)(3) or subsection (b) of this section in any fiscal year for which the President determines that all of the Fund is needed for response to threats to public health from releases or threatened releases of hazardous substances.

(3) No money in the Fund shall be available for remedial action, other than actions specified in subsection (c) of this section, with respect to federally owned facilities; except that money in the Fund shall be available for the provision of alternative water supplies (including the reimbursement of costs incurred by a municipality) in any case involving groundwater contamination outside the boundaries of a federally owned facility in which the federally owned facility is not the only potentially responsible party.

(4) Paragraphs (1) and (4) of subsection (a) of this section shall in the aggregate be subject to such amounts as are provided in appropriation Acts.

(f) The President is authorized to promulgate regulations designating one or more Federal officials who may obligate money in the Fund in accordance with this section or portions thereof. The President is also authorized to delegate authority to obligate money in the Fund or to settle claims to officials of a State or Indian tribe operating under a contract or cooperative agreement with the Federal Government pursuant to section 104(d) of this title.

(g) The President shall provide for the promulgation of rules and regulations with respect to the notice to be provided to potential injured parties by an owner and operator of any vessel, or facility from which a hazardous substance has been released. Such rules and regulations shall consider the scope and form of the notice which would be appropriate to carry out the purposes of this title. Upon promulgation of such rules and regulations, the owner and operator of any vessel or facility from which a hazardous substance has been released shall provide notice in accordance with such rules and regulations. With respect to releases from public vessels, the President shall provide such notification as is appropriate to potential injured parties. Until the promulgation of such rules and regulations, the owner and operator of any vessel or facility from which a hazardous substance has been released shall provide reasonable notice to potential injured parties by publication in local newspapers serving the affected area.

(h) [Repealed]

(i) Except in a situation requiring action to avoid an irreversible loss of natural resources or to prevent or reduce any continuing danger to natural resources or similar need for emergency action, funds may not be used under this Act for the

1 restoration, rehabilitation, or replacement or acquisition of the equivalent of any
2 natural resources until a plan for the use of such funds for such purposes has been
3 developed and adopted by affected Federal agencies and the Governor or
4 Governors of any State having sustained damage to natural resources within its
5 borders, belonging to, managed by or appertaining to such State, and by the
6 governing body of any Indian tribe having sustained damage to natural resources
7 belonging to, managed by, controlled by, or appertaining to such tribe, or held in
8 trust for the benefit of such tribe, or belonging to a member of such tribe if such
9 resources are subject to a trust restriction on alienation, after adequate public
10 notice and opportunity for hearing and consideration of all public comment.

11
12 (j) The President shall use the money in the Post-closure Liability Fund for any
13 of the purposes specified in subsection (a) of this section with respect to a
14 hazardous waste disposal facility for which liability has transferred to such fund
15 under section 107(k) of this Act, and, in addition, for payment of any claim or
16 appropriate request for costs of response, damages, or other compensation for
17 injury or loss under section 107 of this Act or any other State or Federal law,
18 resulting from a release of a hazardous substance from such a facility.

19
20 (k) INSPECTOR GENERAL. —In each fiscal year, the Inspector General of
21 each department, agency, or instrumentality of the United States which is
22 carrying out any authority of this Act shall conduct an annual audit of all
23 payments, obligations, reimbursements, or other uses of the Fund in the prior
24 fiscal year, to assure that the Fund is being properly administered and that claims
25 are being appropriately and expeditiously considered. The audit shall include an
26 examination of a sample of agreements with States (in accordance with the
27 provisions of the Single Audit Act) carrying out response actions under this title
28 and an examination of remedial investigations and feasibility studies prepared for
29 remedial actions. The Inspector General shall submit to the Congress an annual
30 report regarding the audit report required under this subsection. The report
31 shall contain such recommendations as the Inspector General deems appropriate.
32 Each department, agency, or instrumentality of the United States shall cooperate
33 with its inspector general in carrying out this subsection.

34
35 (l) To the extent that the provisions of this Act permit, a foreign claimant may
36 assert a claim to the same extent that a United States claimant may assert a claim
37 if —

38
39 (1) the release of a hazardous substance occurred (A) in the navigable
40 waters or (B) in or on the territorial sea or adjacent shoreline of a foreign
41 country of which the claimant is a resident;

42
43 (2) the claimant is not otherwise compensated for his loss;

(3) the hazardous substance was released from a facility or from a vessel located adjacent to or within the navigable waters or was discharged in connection with activities conducted under the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1331 et seq.) or the Deepwater Port Act of 1974, as amended (33 U.S.C. 1501 et seq.); and

(4) recovery is authorized by a treaty or an executive agreement between the United States and foreign country involved, or if the Secretary of State, in consultation with the Attorney General and other appropriate officials, certifies that such country provides a comparable remedy for United States claimants.

~~[(m) Agency for Toxic Substances and Disease Registry. There shall be directly available to the Agency for Toxic Substances and Disease Registry to be used for the purpose of carrying out activities described in subsection (c)(4) and section 104(i) not less than \$50,000,000 per fiscal year for each of fiscal years 1987 and 1988, not less than \$55,000,000 for fiscal year 1989, and not less than \$60,000,000 per fiscal year for each of fiscal years 1990 and 1991. Any funds so made available which are not obligated by the end of the fiscal year in which made available shall be returned to the Fund.]~~

(m) There shall be directly available to the Agency for Toxic Substances and Disease Registry to be used for the purpose of carrying out activities described in subsection (c)(4) of this section and section 104(i) of this Act not less than \$80,000,000 per fiscal year for each of fiscal years 1995, 1996, 1997, 1998, and 1999. Any funds so made available which are not obligated by the end of the fiscal year in which made available shall be returned to the Fund. [See SRA §703 at page 108]

(n) LIMITATIONS ON RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROGRAM. —

~~[(1) Section 311(b). For each of the fiscal years 1987, 1988, 1989, 1990, 1991, 1992, 1993, and 1994, not more than \$20,000,000 of the amounts available in the Fund may be used for the purposes of carrying out the applied research, development, and demonstration program for alternative or innovative technologies and training program authorized under section 311(b) (relating to research, development, and~~

~~demonstration) other than basic research. Such amounts shall remain available until expended.~~

~~(2) Section 311(a). From the amounts available in the Fund, not more than the following amounts may be used for the purposes of section 311(a) (relating to hazardous substance research, demonstration, and training activities):~~

~~(A) For the fiscal year 1987, \$3,000,000.~~

~~(B) For the fiscal year 1988, \$10,000,000.~~

~~(C) For the fiscal year 1989, \$20,000,000.~~

~~(D) For the fiscal year 1990, \$30,000,000.~~

~~(E) For each of the fiscal years 1991, 1992, 1993, and 1994, \$35,000,000.~~

~~No more than 10 percent of such amounts shall be used for training under section 311(a) in any fiscal year.~~

~~(3) Section 311(d). For each of the fiscal years 1987, 1988, 1989, 1990, and 1991, 1992, 1993, and 1994, not more than \$5,000,000 of the amounts available in the Fund may be used for the purposes of section 311(d) (relating to university hazardous substance research centers).]~~

(1) Section 311(b). — For each of the fiscal years 1995, 1996, 1997, 1998, and 1999, not more than \$20,000,000 of the amounts available in the Fund may be used for the purposes of carrying out the applied research, development, and demonstration program for alternative or innovative technologies and training program authorized under section 311(b) of this title (relating to research, development, demonstration) other than basic research. Such amounts shall remain available until expended.

(2) Section 311(a). — From the amounts available in the Fund, not more than the following amounts may be used for the purposes of section 311(a) of this title (relating to hazardous substance research, demonstration, and training activities) —

1 (A) For fiscal year 1995 \$40,000,000,

2 (B) For fiscal year 1996 \$50,000,000,

3 (C) For fiscal year 1997 \$55,000,000,

4 (D) For fiscal year 1998 \$55,000,000,

5 (E) For fiscal year 1999 \$55,000,000.

6
7
8
9
10
11 No more than 10 percent of such amounts shall be used for
12 training under section 311(a) of this title for any fiscal year.

13
14 (3) Section 311(d). — For each of the fiscal years 1995, 1996,
15 1997, 1998, and 1999, not more than \$5,000,000 of the amounts
16 available in the Fund may be used for the purposes of section
17 311(d) of this title (relating to university hazardous substance
18 research centers). [See SRA §704 at page 109]

19
20 (o) Notification procedures for limitations on certain payments. Not later than
21 90 days after the enactment of this subsection, the President shall develop and
22 implement procedures to adequately notify, as soon as practicable after a site is
23 included on the National Priorities List, concerned local and State officials and
24 other concerned persons of the limitations, set forth in subsection (a)(2) of this
25 section, on the payment of claims for necessary response costs incurred with
26 respect to such site.

27
28 (p) GENERAL REVENUE SHARE OF SUPERFUND.

29
30 ~~[(1) IN GENERAL. — The following sums are authorized to be~~
31 ~~appropriated, out of any money in the Treasury not otherwise~~
32 ~~appropriated, to the Hazardous Substance Superfund:~~

33
34 ~~(A) For fiscal year 1987, \$212,500,000.~~

35
36 ~~(B) For fiscal year 1988, \$212,500,000.~~

37
38 ~~(C) For fiscal year 1989, \$212,500,000.~~

39
40 ~~(D) For fiscal year 1990, \$212,500,000.~~

41
42 ~~(E) For fiscal year 1991, \$212,500,000.~~

~~(F) For fiscal year 1992, \$212,500,000.~~

~~(G) For fiscal year 1993, \$212,500,000.~~

~~(H) For fiscal year 1994, \$212,500,000.~~

~~In addition there is authorized to be appropriated to the Hazardous Substance Superfund for each fiscal year an amount equal to so much of the aggregate amount authorized to be appropriated under this subsection (and paragraph (2) of section 221(b) of the Hazardous Substance Response Revenue Act of 1980) as has not been appropriated before the beginning of the fiscal year involved.]~~

(1) IN GENERAL. — The following sums are authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, to the Hazardous Substance Superfund:

(A) For fiscal year 1995, \$250,000,000,

(B) For fiscal year 1996, \$250,000,000,

(C) For fiscal year 1997, \$250,000,000,

(D) For fiscal year 1998, \$250,000,000,

(E) For fiscal year 1999, \$250,000,000.

In addition there is authorized to be appropriated to the Hazardous Substance Superfund for each fiscal year an amount equal to so much of the aggregate amount authorized to be appropriated under this subsection (and paragraph (2) of section 131(b) of this title) as has not been appropriated before the beginning of the fiscal year involved. [See SRA §705 at page 110]

(2) COMPUTATION. — The amounts authorized to be appropriated under paragraph (1) of this subsection in a given fiscal year shall be available only to the extent that such amount exceeds the amount determined by the Secretary under section 9507(b)(2) of the Internal Revenue Code of 1986 for the prior fiscal year.

(q) ALTERNATIVE OR INNOVATIVE TREATMENT TECHNOLOGIES. — For each of the fiscal years 1995, 1996, 1997,

1 1998, and 1999, not more than \$40,000,000 of the amounts available
2 in the Fund may be used for the purposes of subsection (a)(7) of this
3 section (relating to alternative or innovative treatment technologies).

4
5 (r) CITIZEN INFORMATION AND ACCESS OFFICES. — For each
6 of the fiscal years 1995, 1996, 1997, 1998, and 1999, not more than
7 \$50,000,000 of the amounts available in the Fund may be used for the
8 purposes of section 117(j) of this Act (relating to citizen information
9 and access offices).

10
11 (s) MULTIPLE SOURCES OF RISK DEMONSTRATION
12 PROJECTS. — For the period commencing October 1, 1994 and
13 ending September 30, 1999, not more than \$30,000,000 of the
14 amounts available in the Fund may be used for the purposes of
15 section 117(k) of this Act (relating to multiple sources of risk
16 demonstration projects). [See SRA §706 at page 111]

CLAIMS PROCEDURE

SEC. 112. (a) CLAIMS AGAINST THE FUND FOR RESPONSE COSTS. — No claim may be asserted against the Fund pursuant to section 111(a) unless such claim is presented in the first instance to the owner, operator, or guarantor of the vessel or facility from which a hazardous substance has been released, if known to the claimant, and to any other person known to the claimant who may be liable under section 107. In any case where the claim has not been satisfied within 60 days of presentation in accordance with this subsection, the claimant may present the claim to the Fund for payment. No claim against the Fund may be approved or certified during the pendency of an action by the claimant in court to recover costs which are the subject of the claim.

(b) (1) PRESCRIBING FORMS AND PROCEDURES. — The President shall prescribe appropriate forms and procedures for claims filed hereunder, which shall include a provision requiring the claimant to make a sworn verification of the claim to the best of his knowledge. Any person who knowingly gives or causes to be given any false information as a part of any such claim shall, upon conviction, be fined in accordance with the applicable provisions of title 18 of the United States Code or imprisoned for not more than 3 years (or not more than 5 years in the case of a second or subsequent conviction), or both.

(2) PAYMENT OR REQUEST FOR HEARING. — The President may, if satisfied that the information developed during the processing of the claim warrants it, make and pay an award of the claim, except that no claim may be awarded to the extent that a judicial judgment has been made on the costs that are the subject of the claim. If the President declines to pay all or part of the claim, the claimant may, within 30 days after receiving notice of the President's decision, request an administrative hearing.

(3) BURDEN OF PROOF. — In any proceeding under this subsection, the claimant shall bear the burden of proving his claim.

(4) DECISIONS. — All administrative decisions made hereunder shall be in writing, with notification to all appropriate parties, and shall be rendered within 90 days of submission of a claim to an administrative law judge, unless all the parties to the claim agree in writing to an extension or unless the President, in his discretion, extends the time limit for a period not to exceed sixty days.

(5) FINALITY AND APPEAL. — All administrative decisions hereunder shall be final, and any party to the proceeding may appeal a decision within

30 days of notification of the award or decision. Any such appeal shall be made to the Federal district court for the district where the release or threat of release took place. In any such appeal, the decision shall be considered binding and conclusive, and shall not be overturned except for arbitrary or capricious abuse of discretion.

(6) PAYMENT. — Within 20 days after the expiration of the appeal period for any administrative decision concerning an award, or within 20 days after the final judicial determination of any appeal taken pursuant to this subsection, the President shall pay any such award from the Fund. The President shall determine the method, terms, and time of payment.

(c) (1) Payment of any claim by the Fund under this section shall be subject to the United States Government acquiring by subrogation the rights of the claimant to recover those costs of removal or damages for which it has compensated the claimant from the person responsible or liable for such release.

(2) Any person, including the Fund, who pays compensation pursuant to this Act to any claimant for damages or costs resulting from a release of a hazardous substance shall be subrogated to all rights, claims, and causes of action for such damages and costs of removal that the claimant has under this Act or any other law.

(3) Upon request of the President, the Attorney General shall commence an action on behalf of the Fund to recover any compensation paid by the Fund to any claimant pursuant to this title, and, without regard to any limitation of liability, all interest, administrative and adjudicative costs, and attorney's fees incurred by the Fund by reason of the claim. Such an action may be commenced against any owner, operator, or guarantor, or against any other person who is liable, pursuant to any law, to the compensated claimant or to the Fund, for the damages or costs for which compensation was paid.

(d) STATUTE OF LIMITATIONS. —

(1) CLAIMS FOR RECOVERY OF COSTS. — No claim may be presented under this section for recovery of the costs referred to in section 107(a) after the date 6 years after the date of completion of all response action.

(2) CLAIMS FOR RECOVERY OF DAMAGES. — No claim may be presented under this section for recovery of the damages referred to in

1 section 107(a) unless the claim is presented within 3 years after the later of
2 the following:

3
4 (A) The date of the discovery of the loss and its connection with the
5 release in question.

6
7 (B) The date on which final regulations are promulgated under
8 section 301(c).

9
10 (3) MINORS AND INCOMPETENTS. — The time limitations contained
11 herein shall not begin to run —

12
13 (A) against a minor until the earlier of the date when such minor
14 reaches 18 years of age or the date on which a legal representative is
15 duly appointed for the minor, or

16
17 (B) against an incompetent person until the earlier of the date on
18 which such person's incompetency ends or the date on which a legal
19 representative is duly appointed for such incompetent person.

20
21 (e) Regardless of any State statutory or common law to the contrary, no person
22 who asserts a claim against the Fund pursuant to this title shall be deemed or held
23 to have waived any other claim not covered or assertable against the Fund under
24 this title arising from the same incident, transaction, or set of circumstances, nor
25 to have split a cause of action. Further, no person asserting a claim against the
26 Fund pursuant to this title shall as a result of any determination of a question of
27 fact or law made in connection with that claim be deemed or held to be
28 collaterally estopped from raising such question in connection with any other
29 claim not covered or assertable against the Fund under this title arising from the
30 same incident, transaction, or set of circumstances.

31
32 (f) DOUBLE RECOVERY PROHIBITED. — Where the President has paid out
33 of the Fund for any response costs or any costs specified under section 111(c)(1)
34 or (2), no other claim may be paid out of the Fund for the same costs.

LITIGATION, JURISDICTION AND VENUE

SEC. 113 (a) Review of any regulation promulgated under this Act may be had ~~[upon application by any interested person]~~ *by any adversely affected person through the filing of a petition for review* only in the Circuit Court of Appeals of the United States for the District of Columbia. Any such ~~[application shall be made]~~ *petition shall be filed* within ninety days from the date of promulgation of such regulations. Any matter with respect to which review could have been obtained under this subsection shall not be subject to judicial review in any civil or criminal proceeding for enforcement or to obtain damages or recovery of response costs. [See SRA §405(a)(1) at page 56]; [See SRA §405(a)(2) at page 56]

(b) Except as provided in subsections (a) and (h) of this section, the United States district courts shall have exclusive original jurisdiction over all controversies arising under this Act, *or in any manner limiting or affecting the President's ability to carry out a response action under this Title* without regard to the citizenship of the parties or the amount in controversy. *Any action initiated in any state or local court against the United States (or any department, agency, or instrumentality, officer or employee thereof) pursuant to or under any provision of or authorized by this Title may be removed by the United States to the appropriate federal district court in accordance with Section 1446 of Title 18 of the U.S. Code.* Venue shall lie in any district in which the release or damages occurred, or in which the defendant resides, may be found, or has his principal office. For the purposes of this section, the Fund shall reside in the District of Columbia. [See SRA §405(b)(1) at page 56]; [See SRA §405(b)(2) at page 56]

(c) The provisions of subsections (a) and (b) of this section shall not apply to any controversy or other matter resulting from the assessment of collection of any tax, as provided by title II of this Act, or to the review of any regulation promulgated under the Internal Revenue Code of 1954.

(d) No provision of this Act shall be deemed or held to moot any litigation concerning any release of any hazardous substance, or any damages associated therewith, commenced prior to enactment of this Act.

(e) NATIONWIDE SERVICE OF PROCESS. — In any action by the United States under this Act, process may be served in any district where the defendant is found, resides, transacts business, or has appointed an agent for the service of process.

(f) CONTRIBUTION. —

(1)(A)CONTRIBUTION. — Any person *who is liable or potentially liable under section 107(a) of this title* may seek contribution from any other person who is liable or potentially liable under section 107(a), ~~[during or following any civil action under section 106 or under section 107(a)]~~¹¹ *in a claim asserted under section 107(a) [-] except that there shall be no right of contribution where —* [See SRA §406(a)(1) at page 59]; [See SRA §406(a)(2) at page 59]; [See SRA §406(a)(3) at page 59]

(i) *the person asserting the right of contribution has waived such rights in a settlement pursuant to this Act;*

(ii) *the person from whom contribution is sought is liable solely under section 107(a)(3) of this Act, and contributed less than ten pounds or ten liters of material containing hazardous substances at the facility, or such greater or lesser amount as the Administrator may determine by regulation;*

(iii) *the person from whom contribution is sought has entered into a final settlement with the United States pursuant to section 122(g). [See SRA §406(a)(4) at page 59]*

Such claims shall be brought in accordance with *section 107(a)*, this section and the Federal Rules of Civil Procedure, and shall be governed by Federal law. In resolving contribution claims, the court may allocate response costs among liable parties using such equitable factors as the court determines are appropriate. ~~[Nothing in this subsection shall diminish the right of any person to bring an action for contribution in the absence of a civil action under section 106 or section 107.]~~ [See SRA §406(a)(5) at page 60]; [See SRA §406(a)(6) at page 60]

(B) *Any person who commences an action for contribution against a person who is not liable by operation of subsection 107(a)(5) of this Act, or against a person who*

¹¹Section 406(a) of the Administration bill (page 59) says that the following language should be deleted from section 113(f)(1) of CERCLA: "during or following any civil action under section 106 of this title or under section 107(a) of this title." (emphasis added) This exact language does not appear in section 113(f)(1); however, similar language does, and it is placed in bold in the text.

1 *is protected from suits in contribution by this section or*
2 *by a settlement with the United States, shall be liable to*
3 *the person against whom the claim of contribution is*
4 *brought for all reasonable costs of defending against the*
5 *claim, including all reasonable attorney's and expert*
6 *witness fees. [See SRA §406(b) at page 60]*

7
8 ~~[(2) SETTLEMENT. — A person who has resolved its liability~~
9 ~~to the United States or a State in an administrative or judicially~~
10 ~~approved settlement shall not be liable for claims for~~
11 ~~contribution regarding matters addressed in the settlement. Such~~
12 ~~settlement does not discharge any of the other potentially liable~~
13 ~~persons unless its terms so provide, but it reduces the potential~~
14 ~~liability of the others by the amount of the settlement.]~~

15
16 (2) SETTLEMENT. — A person that has resolved its liability
17 to the United States in an administrative or judicially approved
18 settlement shall not be liable for claims by other persons
19 regarding response actions, response costs or damages addressed
20 in the settlement. A person that has resolved its liability to a
21 State in an administrative or judicially approved settlement shall
22 not be liable for claims by persons other than the United States
23 regarding response costs or damages addressed in the settlement
24 for which the State has a claim under this title. Such
25 settlement does not discharge any other potentially responsible
26 persons unless its terms so provide, but it reduces the potential
27 liability of such other persons by the amount of the settlement.
28 The protection afforded by this section shall include protection
29 against contribution claims and all other types of claims, under
30 federal or state law, that may be asserted against the settling
31 party for recovery of response costs or damages incurred or
32 paid by another person, if such costs or damages are addressed
33 in the settlement, but shall not include protection against claims
34 based on contractual indemnification or other express
35 contractual agreements to pay such costs or damages. [See SRA
36 §406(c) at page 60]

37
38 (3) PERSONS NOT PARTY TO SETTLEMENT. —

39
40 (A) If the United States or a State has obtained less than complete relief
41 from a person who has resolved its liability to the United States or the State
42 in an administrative or judicially approved settlement, the United States or

1 the State may bring an action against any person who has not so resolved its
2 liability.

3
4 (B) A person who has resolved its liability to the United States or a State
5 for some or all of a response action or for some or all of the costs of such
6 action in an administrative or judicially approved settlement may seek
7 contribution from any person who is not party to a settlement referred to
8 in paragraph (2).

9
10 (C) In any action under this paragraph, the rights of any person who has
11 resolved its liability to the United States or a State shall be subordinate to
12 the rights of the United States or the State. Any contribution action
13 brought under this paragraph shall be governed by Federal law.

14
15 (g) PERIOD IN WHICH ACTION MAY BE BROUGHT. —

16
17 (1) ACTIONS FOR NATURAL RESOURCE DAMAGES. — Except as
18 provided in paragraphs (3) and (4), no action may be commenced for
19 damages (as defined in section 101(6)) under this Act, unless that action is
20 commenced within 3 years after the later of the following:

21
22 (A) The date of the discovery of the loss and its connection with the
23 release in question.

24
25 (B) The date on which regulations are promulgated under section
26 301(c).

27
28 With respect to any facility listed on the National Priorities List (NPL),
29 any Federal facility identified under section 120 (relating to Federal
30 facilities), or any vessel or facility at which a remedial action under this
31 Act is otherwise scheduled, an action for damages under this Act must be
32 commenced within 3 years after the completion of the remedial action
33 (excluding operation and maintenance activities) in lieu of the dates
34 referred to in subparagraph (A) or (B). In no event may an action for
35 damages under this Act with respect to such a vessel or facility be
36 commenced (i) prior to 60 days after the Federal or State natural resource
37 trustee provides to the President and the potentially responsible party a
38 notice of intent to file suit, or (ii) before selection of the remedial action if
39 the President is diligently proceeding with a remedial investigation and
40 feasibility study under section 104(b) or section 120 (relating to Federal
41 facilities). The limitation in the preceding sentence on commencing an
42 action before giving notice or before selection of the remedial action does

not apply to actions filed on or before the enactment of the Superfund Amendments and Reauthorization Act of 1986.

~~[(2) ACTIONS FOR RECOVERY OF COSTS. — An initial action for recovery of the costs referred to in section 107 must be commenced—~~

~~(A) for a removal action, within 3 years after completion of the removal action, except that such cost recovery action must be brought within 6 years after a determination to grant a waiver under section 104(c)(1)(C) for continued response action; and~~

~~(B) for a remedial action, within 6 years after initiation of physical on-site construction of the remedial action, except that, if the remedial action is initiated within 3 years after the completion of the removal action, costs incurred in the removal action may be recovered in the cost recovery action brought under this subparagraph.~~

~~In any such action described in this subsection, the court shall enter a declaratory judgment on liability for response costs or damages that will be binding on any subsequent action or actions to recover further response costs or damages. A subsequent action or actions under section 107 for further response costs at the vessel or facility may be maintained at any time during the response action, but must be commenced no later than 3 years after the date of completion of all response action. Except as otherwise provided in this paragraph, an action may be commenced under section 107 for recovery of costs at any time after such costs have been incurred.~~

~~(3) CONTRIBUTION. — No action for contribution for any response costs or damages may be commenced more than 3 years after—~~

~~(A) the date of judgment in any action under this Act for recovery of such costs or damages, or~~

~~(B) the date of an administrative order under section 122(g) (relating to de minimis settlements) or 122(h) (relating to cost recovery settlements) or entry of a~~

1 ~~judicially approved settlement with respect to such costs or~~
2 ~~damages.]~~

3
4 **(2) ACTIONS FOR RECOVERY OF COSTS. — Except as**
5 **provided in Paragraph (3) below, an initial action for recovery**
6 **of costs referred to in section 107 of this title must be**
7 **commenced —**

8
9 **(A) for removal action, within three years after**
10 **completion of all removal action taken with respect to the**
11 **facility, including off-site disposal of any removed**
12 **materials; except that if physical on-site construction of**
13 **the remedial action is initiated within three years after the**
14 **completion of all removal action taken with respect to the**
15 **facility, costs incurred for removal action may be**
16 **recovered in the cost recovery action brought under**
17 **subparagraph (B); and**

18
19 **(B) for a remedial action, within six years after initiation**
20 **of physical on-site construction of the remedial action.**

21
22 **In any such action described in this subsection, the court shall**
23 **enter a declaratory judgment on liability for response costs or**
24 **damages that will be binding on any subsequent action or actions**
25 **to recover further response costs or damages. A subsequent**
26 **action or actions under section 107 of this title for further**
27 **response costs at the vessel or facility may be maintained at any**
28 **time during the response action, but must be commenced no**
29 **later than three years after the date of completion of all**
30 **response action. Except as otherwise provided in this**
31 **paragraph, an action may be commenced under section 107 of**
32 **this title for recovery of costs at any time after such costs have**
33 **been incurred.**

34
35 **(3)CONTRIBUTION — An action by a potentially responsible**
36 **party against another potentially responsible party for recovery**
37 **of any response costs or damages must be commenced within the**
38 **later of —**

39
40 **(A) the time limitations set forth in Paragraph (2) above,**
41 **or**
42

1 ***(B) where recovery is sought for costs or damages paid***
2 ***pursuant to a judgment or settlement, three years after —***

3
4 ***(i) the date of judgment in any action under this Act***
5 ***for recovery of such costs or damages, or***

6
7 ***(ii) the date of any administrative order or judicial***
8 ***settlement for recovery of the costs or damages paid***
9 ***or incurred pursuant to such a settlement. [See SRA***
10 ***§405(c) at page 57]***

11
12 **(4) SUBROGATION.** — No action based on rights subrogated pursuant to
13 this section by reason of payment of a claim may be commenced under this
14 title more than 3 years after the date of payment of such claim.

15
16 **(5) ACTIONS TO RECOVER INDEMNIFICATION PAYMENTS.** —
17 Notwithstanding any other provision of this subsection, where a payment
18 pursuant to an indemnification agreement with a response action contractor
19 is made under section 119, an action under section 107 for recovery of
20 such indemnification payment from a potentially responsible party may be
21 brought at any time before the expiration of 3 years from the date on
22 which such payment is made.

23
24 **(6) MINORS AND INCOMPETENTS.** — The time limitations contained
25 herein shall not begin to run —

26
27 ***(A) against a minor until the earlier of the date when such minor***
28 ***reaches 18 years of age or the date on which a legal representative is***
29 ***duly appointed for such minor, or***

30
31 ***(B) against an incompetent person until the earlier of the date on***
32 ***which such incompetent's incompetency ends or the date on which a***
33 ***legal representative is duly appointed for such incompetent.***

34
35 **(4) CLAIMS BY THE UNITED STATES, STATES OR INDIAN**
36 ***TRIBES.*** — ***Claims by the United States under Section 106, and***
37 ***claims by the United States, a State or Indian tribe under***
38 ***Section 107(a), of this Act shall not be deemed compulsory***
39 ***counterclaims in an action against the United States, a State or***
40 ***an Indian tribe seeking response costs, contribution, damages,***

1 *or any other claim by any person under this Act.*¹² [See SRA
2 §405(d) at page 58]
3

4 (h) TIMING OF REVIEW. — No Federal court shall have jurisdiction under
5 Federal law other than under section 1332 of title 28 of the United States Code
6 (relating to diversity of citizenship jurisdiction) or under State law which is
7 applicable or relevant and appropriate under section 121 (relating to cleanup
8 standards) to review any challenges to removal or remedial action selected under
9 section 104, or to review any order issued under section 106(a), in any action
10 except one of the following:

11
12 (1) An action under section 107 to recover response costs or damages or
13 for contribution.

14
15 (2) An action to enforce an order issued under section 106(a) or to recover
16 a penalty for violation of such order.

17
18 (3) An action for reimbursement under section 106(b)(2).

19
20 (4) An action under section 310 (relating to citizens suits) alleging that the
21 removal or remedial action taken under section 104 or secured under
22 section 106 was in violation of any requirement of this Act. Such an action
23 may not be brought with regard to a removal where a remedial action is to
24 be undertaken at the site.

25
26 (5) An action under section 106 in which the United States has moved to
27 compel a remedial action.

28
29 (i) INTERVENTION. — In any action commenced under this Act or under the
30 Solid Waste Disposal Act in a court of the United States, any person may
31 intervene as a matter of right when such person claims an interest relating to the
32 subject of the action and is so situated that the disposition of the action may, as a
33 practical matter, impair or impede the person's ability to protect that interest,
34 unless the President or the State shows that the person's interest is adequately
35 represented by existing parties.

36
37 (j) JUDICIAL REVIEW. —

38
39 (1) LIMITATION. — In any judicial action under this Act, judicial review
40 of any issues concerning the adequacy of any response action taken *or*

¹²Section 405(d) of the Administration bill (page 58) states that this language should be placed "at the end" of section 113(g) of CERCLA. This has been done even though it is not in numerical sequence. Moreover, it creates two paragraphs (4) in subsection 113(g).

1 *selected by the President pursuant to this Act* or ordered or
2 *sought* by the President shall be limited to the administrative record.
3 Otherwise applicable principles of administrative law shall govern whether
4 any supplemental materials may be considered by the court. [See SRA
5 §405(e)(1) at page 58]; [See SRA §405(e)(2) at page 59]
6

7 (2) STANDARD. — In considering objections raised in any judicial action
8 under this Act, the court shall uphold the President's decision in selecting
9 the response action unless the objecting party can demonstrate, on the
10 administrative record, that the decision was arbitrary and capricious or
11 otherwise not in accordance with law.
12

13 (3) REMEDY. — If the court finds that the selection of the response action
14 was arbitrary and capricious or otherwise not in accordance with law, the
15 court shall award (A) only the response costs or damages that are not
16 inconsistent with the national contingency plan, and (B) such other relief as
17 is consistent with the National Contingency Plan.
18

19 (4) PROCEDURAL ERRORS. — In reviewing alleged procedural errors,
20 the court may disallow costs or damages only if the errors were so serious
21 and related to matters of such central relevance to the action that the action
22 would have been significantly changed had such errors not been made.
23

24 (k) ADMINISTRATIVE RECORD AND PARTICIPATION PROCEDURES. —
25

26 (1) ADMINISTRATIVE RECORD. — The President shall establish an
27 administrative record upon which the President shall base the selection of a
28 response action. The administrative record shall be available to the public
29 at or near the facility at issue. The President also may place duplicates of
30 the administrative record at any other location.
31

32 (2) PARTICIPATION PROCEDURES. —
33

34 (A) REMOVAL ACTION. — The President shall promulgate
35 regulations in accordance with chapter 5 of title 5 of the United
36 States Code establishing procedures for the appropriate participation
37 of interested persons in the development of the administrative record
38 on which the President will base the selection of removal actions and
39 on which judicial review of removal actions will be based.
40

41 (B) REMEDIAL ACTION. — The President shall provide for the
42 participation of interested persons, including potentially responsible
43 parties, in the development of the administrative record on which the

1 President will base the selection of remedial actions and on which
2 judicial review of remedial actions will be based. The procedures
3 developed under this subparagraph shall include, at a minimum, each
4 of the following:

5
6 (i) Notice to potentially affected persons and the public, which
7 shall be accompanied by a brief analysis of the plan and
8 alternative plans that were considered.

9
10 (ii) A reasonable opportunity to comment and provide
11 information regarding the plan.

12
13 (iii) An opportunity for a public meeting in the affected area,
14 in accordance with section 117(a)(2) (relating to public
15 participation).

16
17 (iv) A response to each of the significant comments, criticisms,
18 and new data submitted in written or oral presentations.

19
20 (v) A statement of the basis and purpose of the selected action.

21
22 For purposes of this subparagraph, the administrative record shall
23 include all items developed and received under this subparagraph and
24 all items described in the second sentence of section 117(d), the
25 President shall promulgate regulations in accordance with chapter 5
26 of title 5 of the United States Code to carry out the requirements of
27 this subparagraph.

28
29 (C) INTERIM RECORD. — Until such regulations under
30 subparagraphs (A) and (B) are promulgated, the administrative
31 record shall consist of all items developed and received pursuant to
32 current procedures for selection of the response action, including
33 procedures for the participation of interested parties and the public.
34 The development of an administrative record and the selection of
35 response action under this Act shall not include an adjudicatory
36 hearing.

37
38 (D) POTENTIALLY RESPONSIBLE PARTIES. — The President
39 shall make reasonable efforts to identify and notify potentially
40 responsible parties as early as possible before selection of a response
41 action. Nothing in this paragraph shall be construed to be a defense
42 to liability.
43

- 1 (I) NOTICE OF ACTIONS. — Whenever any action is brought under this Act in
- 2 a court of the United States by a plaintiff other than the United States, the
- 3 plaintiff shall provide a copy of the complaint to the Attorney General of the
- 4 United States and to the Administrator of the Environmental Protection Agency.

RELATIONSHIP TO OTHER LAW

SEC. 114. (a) ~~[Nothing]~~ *Except as otherwise provided in this Act, nothing* in this Act shall be construed or interpreted as preempting any State from imposing any additional liability or requirements with respect to the release of hazardous substances within such State. [See SRA §201(b)(2) at page 5]

(b) Any person who receives compensation for removal costs or damages or claims pursuant to this Act shall be precluded from recovering compensation for the same removal costs or damages or claims pursuant to any other State or Federal law. Any person who receives compensation for removal costs or damages or claims pursuant to any other Federal or State law shall be precluded from receiving compensation for the same removal costs or damages or claims as provided in this Act.

(c) RECYCLED OIL. —

(1) SERVICE STATION DEALERS, ETC. — No person (including the United States or any State) may recover, under the authority of subsection (a)(3) or (a)(4) of section 107, from a service station dealer for any response costs or damages resulting from a release or threatened release of recycled oil, or use the authority of section 106 against a service station dealer other than a person described in subsection (a)(1) or (a)(2) of section 107, if such recycled oil —

(A) is not mixed with any other hazardous substance, and

(B) is stored, treated, transported, or otherwise managed in compliance with regulations or standards promulgated pursuant to section 3014 of the Solid Waste Disposal Act and other applicable authorities.

Nothing in this paragraph shall affect or modify in any way the obligations or liability of any person under any other provision of State or Federal law, including common law, for damages, injury, or loss resulting from a release or threatened release of any hazardous substance or for removal or remedial action or the costs of removal or remedial action.

(2) PRESUMPTION. —Solely for the purposes of this subsection, a service station dealer may presume that a small quantity of used oil is not mixed with other hazardous substances if it —

1 (A) has been removed from the engine of a light duty motor vehicle
2 or household appliances by the owner of such vehicle or appliances,
3 and
4

5 (B) is presented, by such owner, to the dealer for collection,
6 accumulation, and delivery to an oil recycling facility.
7

8 (3) DEFINITION. — For purposes of this subsection, the terms "used oil"
9 and "recycled oil" have the same meanings as set forth in sections 1004(36)
10 and 1004(37) of the Solid Waste Disposal Act and regulations promulgated
11 pursuant to that Act.
12

13 (4) EFFECTIVE DATE. — The effective date of paragraphs (1) and (2) of
14 this subsection shall be the effective date of regulations or standards
15 promulgated under section 3014 of the Solid Waste Disposal Act that
16 include, among other provisions, a requirement to conduct corrective
17 action to respond to any releases of recycled oil under subtitle C or subtitle
18 I of such Act.
19

20 (d) Except as provided in this title, no owner or operator of a vessel or facility
21 who establishes and maintains evidence of financial responsibility in accordance
22 with this title shall be required under any State or local law, rule, or regulation to
23 establish or maintain any other evidence of financial responsibility in connection
24 with liability for the release of a hazardous substance from such vessel or facility.
25 Evidence of compliance with the financial responsibility requirements of this title
26 shall be accepted by a State in lieu of any other requirement of financial
27 responsibility imposed by such State in connection with liability for the release of
28 a hazardous substance from such vessel or facility.

AUTHORITY TO DELEGATE, ISSUE REGULATIONS

SEC. 115. (a) The President is authorized to delegate and assign any duties or powers imposed upon or assigned to him and to promulgate any regulations necessary to carry out the provisions of this title

(b) *The authority conferred by this section includes, without limitation, authority to promulgate legislative regulations to define the terms and scope of sections 101 through 405 this Act, inclusive.*

(c) *This section confirms, without limitation, authority to promulgate regulations to define the terms of this Act as they apply to lenders and other financial services providers, and property custodians, trustees, and other fiduciaries. [See SRA §407 at page 61]*

SCHEDULES

SEC. 116. (a) ASSESSMENT AND LISTING OF FACILITIES. — It shall be a goal of this Act that, to the maximum extent practicable —

(1) not later than January 1, 1988, the President shall complete preliminary assessments of all facilities that are contained (as of the date of enactment of the Superfund Amendments and Reauthorization Act of 1986 on the Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS) including in each assessment a statement as to whether a site inspection is necessary and by whom it should be carried out; and

(2) not later than January 1, 1989, the President shall assure the completion of site inspections at all facilities for which the President has stated a site inspection is necessary pursuant to paragraph (1).

(b) EVALUATION. — Within 4 years after enactment of the Superfund Amendments and Reauthorization Act of 1986, each facility listed (as of the date of such enactment) in the CERCLIS shall be evaluated if the President determines that such evaluation is warranted on the basis of a site inspection or preliminary assessment. The evaluation shall be in accordance with the criteria established in section 105 under the National Contingency Plan for determining priorities among release for inclusion on the National Priorities List. In the case of a facility listed in the CERCLIS after the enactment of the Superfund Amendments and Reauthorization Act of 1986, the facility shall be evaluated within 4 years after the date of such listing if the President determines that such evaluation is warranted on the basis of a site inspection or preliminary assessment.

(c) EXPLANATIONS. — If any of the goals established by subsection (a) or (b) are not achieved, the President shall publish an explanation of why such action could not be completed by the specified date.

(d) COMMENCEMENT OF RI/FS. — The President shall assure that remedial investigations and feasibility studies (RI/FS) are commenced for facilities listed on the National Priorities List, in addition to those commenced prior to the date of enactment of the Superfund Amendments and Reauthorization Act of 1986, in accordance with the following schedule:

(1) not fewer than 275 by the date 36 months after the date of enactment of the Superfund Amendments and Reauthorization Act of 1986, and

1 (2) if the requirement of paragraph (1) is not met, not fewer than an
2 additional 175 by the date 4 years after such date of enactment, an
3 additional 200 by the date 5 years after such date of enactment, and a total
4 of 650 by the date 5 years after such date of enactment.
5

6 (e) COMMENCEMENT OF REMEDIAL ACTION. —The President shall assure
7 that substantial and continuous physical on-site remedial action commences at
8 facilities on the National Priorities List, in addition to those facilities on which
9 remedial action has commenced prior to the date of enactment of the Superfund
10 Amendments and Reauthorization Act of 1986, at a rate not fewer than:
11

12 (1) 175 facilities during the first 36-month period after enactment of this
13 subsection; and
14

15 (2) 200 additional facilities during the following 24 months after such 36-
16 month period.

PUBLIC PARTICIPATION

SEC. 117(a) PROPOSED PLAN. — Before adoption of any plan for remedial action to be undertaken by the President, by a State, or by any other person, under section 104, 106, 120, or 122, the President or State, as appropriate, shall take ~~[both of]~~ the following actions:

(1) Publish a notice and brief analysis of the proposed plan and make such plan available to the public.

(2) Provide a reasonable opportunity for submission of written and oral comments and an opportunity for a public meeting at or near the facility at issue regarding the proposed plan and regarding any proposed findings under section 121(d)(4) (relating to cleanup standards). The President or the State shall keep a transcript of the meeting and make such transcript available to the public.

(3) Consider the recommendations of any Community Working Group, community members and Technical Assistance Grant recipients established for the facility pursuant to this section. Provide, in writing a response to each significant comment received during the public comment period. The written response shall include an explanation of how the lead agency has used or rejected significant comments of the Community Working Group in its final decision. [See SRA §105 at page 13]

The notice and analysis published under paragraph (1) shall include sufficient information as may be necessary to provide a reasonable explanation of the proposed plan and alternative proposals considered.

(b) FINAL PLAN. — Notice of the final remedial action plan adopted shall be published and the plan shall be made available to the public before commencement of any remedial action. Such final plan shall be accompanied by a discussion of any significant changes (and the reasons for such changes) in the proposed plan and a response to each of the significant comments, criticisms, and new data submitted in written or oral presentations under subsection (a).

(c) EXPLANATION OF DIFFERENCES. — After adoption of a final remedial action plan—

(1) if any remedial action is taken,

(2) if any enforcement action under section 106 is taken, or

1 (3) if any settlement or consent decree under section 106 or section 122 is
2 entered into, and if such action, settlement, or decree differs in any
3 significant respects from the final plan, the President or the State shall
4 publish an explanation of the significant differences and the reasons such
5 changes were made.

6
7 (d) PUBLICATION. — For the purposes of this section, publication shall
8 include, at a minimum, publication in a major local newspaper of general
9 circulation. In addition, each item developed, received, published, or made
10 available to the public under this section shall be available for public inspection
11 and copying at or near the facility at issue

12
13 (e) GRANTS FOR TECHNICAL ASSISTANCE. —

14
15 ~~[(1) AUTHORITY. — Subject to such amounts as are provided~~
16 ~~in appropriations Acts and in accordance with rules~~
17 ~~promulgated by the President, the President may make grants~~
18 ~~available to any group of individuals which may be affected by~~
19 ~~a release or threatened release at any facility which is listed on~~
20 ~~the National Priorities List under the National Contingency~~
21 ~~Plan. Such grants may be used to obtain technical assistance in~~
22 ~~interpreting information with regard to the nature of the~~
23 ~~hazard, remedial investigation and feasibility study, record of~~
24 ~~decision, remedial design, selection and construction of~~
25 ~~remedial action, operation and maintenance, or removal action~~
26 ~~at such facility.]~~

27
28 *(1) AUTHORITY. — Subject to such amounts as are provided in*
29 *appropriations Acts and in accordance with rules promulgated*
30 *by the President, the President may make grants or services*
31 *available to any group of individuals which may be affected by*
32 *a release or threatened release of a hazardous substance or*
33 *pollutant, or contaminant at or from a facility where there is*
34 *significant response action under this Act including, a site*
35 *assessment, remedial investigation/feasibility study, or other*
36 *removal or remedial action. [See SRA §102(a) at page 6]*

37
38 ~~[(2) AMOUNT. — The amount of any grant under this~~
39 ~~subsection may not exceed \$ 50,000 for a single grant recipient.~~
40 ~~The President may waive the \$ 50,000 limitation in any case~~
41 ~~where such waiver is necessary to carry out the purposes of this~~
42 ~~subsection. Each grant recipient shall be required, as a~~
43 ~~condition of the grant, to contribute at least 20 percent of the~~

~~total of costs of the technical assistance for which such grant is made. The President may waive the 20 percent contribution requirement if the grant recipient demonstrates financial need and such waiver is necessary to facilitate public participation in the selection of remedial action at the facility. Not more than one grant may be made under this subsection with respect to a single facility, but the grant may be renewed to facilitate public participation at all stages of remedial action.]~~

(2) AMOUNT. — The amount of any grants or services may not exceed \$50,000 for a single recipient of grants or services. The President may waive the \$50,000 limitation in any case where such waiver is necessary to carry out the purposes of this subsection. Each recipient of grants or services shall be required, as a condition of the grants or services, to contribute at least 20 percent of the total costs of the technical assistance for which such grants and services are made. The President may waive the 20 percent contribution requirement if the grants or services recipient demonstrates financial need, and such waiver is necessary to facilitate public participation in the selection of remedial action at the facility. Not more than one award or grants or services may be made with respect to a single facility, but the grants or services may be renewed to facilitate public participation at all stages of remedial action.

[See SRA §117(e) at page 6]

(f) EARLY, DIRECT AND MEANINGFUL COMMUNITY

INVOLVEMENT. — *The President shall provide for early, direct and meaningful community involvement in each significant phase of response activities taken under this Act. The President shall provide the community with access to information necessary to develop meaningful comments on critical decisions regarding facility characterization, risks posed by the facility, and selection of removal and remedial actions. The President shall consider the views, preferences and recommendations of the affected community regarding all aspects of the response activities, including the acceptability to the community of achieving background levels.*

(g) INFORMATION TO BE DISSEMINATED. — *In addition to other information the President considers appropriate, the President shall ensure that the community is provided information on the following —*

1 (1) the availability of a Technical Assistance Grant (TAG)
2 under subsection (e), directions on completing the TAG
3 application, and the details of the application process;

4
5 (2) the possibility (where relevant) that members of a
6 community may qualify to receive an alternative water supply
7 or relocation assistance;

8
9 (3) the Superfund process, and rights of private citizens and
10 public interest or community groups;

11
12 (4) the potential for or existence of a Community Working
13 Group (CWG) established under subsection (i) (as added by the
14 Superfund Reform Act of 1994); and

15
16 (5) an objective description of the facility's location and
17 characteristics, the contaminants present, the known exposure
18 pathways, and the steps being taken to assess the risk presented
19 by the facility.

20
21 (h) **PROCESS FOR INVOLVEMENT.** — As early as practicable
22 after site discovery, the President shall provide regular, direct, and
23 meaningful community involvement in all phases of the response
24 activities at the facility, including —

25
26 (1) **SITE ASSESSMENT.** — Whenever practicable, during the
27 site assessment, the President shall solicit and evaluate the
28 concerns and interests of the community likely affected by the
29 facility. The evaluation may consist of face-to face community
30 surveys, a minimum of one public meeting, written responses to
31 significant concerns, and other appropriate participatory
32 activities.

33
34 (2) **REMEDIAL INVESTIGATION/FEASIBILITY STUDY.** —
35 During the remedial investigation and feasibility study, the
36 President shall solicit the views and preferences of the
37 community on the remediation and disposition of the hazardous
38 substances, pollutants or contaminants at the site. The
39 community's views and preferences shall be described in the
40 remedial investigation and feasibility study and considered in
41 the development of remedial alternatives for the facility. [See
42 SRA §102(c) at page 7]

1 (i) **COMMUNITY WORKING GROUPS. —**

2
3 **(1) CREATION AND RESPONSIBILITIES. —** *The President*
4 *shall provide the opportunity to establish a representative public*
5 *forum, known as a Community Working Group (CWG), to*
6 *achieve direct, regular and meaningful consultation with*
7 *community members throughout all stages of a response action.*
8 *The President shall consult with the CWG at each significant*
9 *phase of the remedial process.*

10
11 **(2) INFORMATION CLEARINGHOUSE. —** *The CWG shall*
12 *serve as a facility information clearinghouse for the community.*
13 *In addition to maintaining records of facility status and lists of*
14 *active citizen groups and available experts, the CWG shall also*
15 *be a repository for health assessment information and other*
16 *related health data.*

17
18 **(3) LAND USE RECOMMENDATIONS. —** *To establish land use*
19 *expectations more reliably, and obtain greater community*
20 *support for remedial decisions affecting future land use, the*
21 *President shall consult with the CWG on a regular basis*
22 *throughout the remedy selection process regarding reasonably*
23 *anticipated future use of land at the facility. The CWG may*
24 *offer recommendations to the President at any time during the*
25 *response activities at the facility on the reasonably anticipated*
26 *future use of land at the facility, taking into account*
27 *development possibilities and future waste management needs.*
28 *The President shall not be bound by any recommendation of the*
29 *CWG. However, when the CWG achieves substantial agreement*
30 *on the reasonably anticipated future use of the land at the*
31 *facility, the President shall give substantial weight to that*
32 *recommendation. In cases where there is substantive*
33 *disagreement within the CWG over a recommendation regarding*
34 *the reasonably anticipated future use of land at the facility, the*
35 *President shall seek to reconcile the differences. In the event of*
36 *continued substantive disagreement, substantial weight shall be*
37 *given to the views of the residents of the affected community.*
38 *Should the President make a determination that is inconsistent*
39 *with a CWG recommendation on the reasonably anticipated*
40 *future use of land at the facility, the President shall issue a*
41 *written reason for the inconsistency.*
42

1 (4) **MEMBERS.** — *CWG membership shall not exceed twenty*
2 *persons. CWG members shall serve without pay. Nominations*
3 *for CWG membership shall be solicited and accepted by the*
4 *President. Selection of CWG members shall be made by the*
5 *President. In selecting citizen participants for the CWG, the*
6 *President shall provide notice and an opportunity to participate*
7 *in CWGs to persons who potentially are affected by facility*
8 *contamination in the community. Special efforts shall be made*
9 *to ensure that the composition of CWGs reflects a balanced*
10 *representation of all those interested in facility remediation. In*
11 *general, it shall be appropriate for the President to offer*
12 *members of the following groups representation on a CWG -*

13
14 (A) *Residents and/or landowners who live on or have*
15 *property immediately adjacent to or near the facility, or*
16 *who may be directly affected by releases from the facility,*
17 *with a minimum of one representative of the recipient a*
18 *grant for technical assistance, if any, awarded under*
19 *subsection (e);*

20
21 (B) *Persons who, although not physically as close to the*
22 *facility as those in the group identified in subparagraph*
23 *(A), may be potentially affected by releases from the*
24 *facility;*

25
26 (C) *Members of the local medical community who have*
27 *resided in the community for at least five years;*

28
29 (D) *Representatives of Indian tribes;*

30
31 (E) *Representatives of citizen, environmental or public*
32 *interest groups with members residing in the community;*

33
34 (F) *Local government officials;*

35
36 (G) *Workers at the facility who will be involved in actual*
37 *cleanup operations;*

38
39 (H) *Persons at the facility during response actions;*
40

1 (I) Facility owners and the significant PRPs who,
2 whenever practicable, represent a balance of interests;
3 and,

4
5 (J) Members of the local business community.

6
7 (5) OTHER COMMUNITY VIEWS. — The existence of a CWG
8 shall not affect or diminish any other obligation of the
9 President to consider the views of any person in selecting
10 response actions under this Act. [See SRA §103 at page 9]

11
12 (j) CITIZEN INFORMATION AND ACCESS OFFICES. —

13
14 (1) CREATION AND RESPONSIBILITIES. — The
15 Administrator shall ensure that an independent Citizen
16 Information and Access Office (CIAO) is established in each
17 state and on each tribal land affected by a National Priorities
18 List facility.

19
20 (2) PRIMARY FUNCTIONS. — The primary functions of each
21 CIAO shall be to —

22
23 (A) Inform citizens and elected officials at all levels of
24 government of the existence and status of National
25 Priorities List facilities in the state;

26
27 (B) Provide citizens with information about each phase of
28 the Superfund process, including the site identification,
29 assessment and cleanup phases;

30
31 (C) Ensure wide distribution of information that is easily
32 understood by citizens;

33
34 (D) Serve as a state-wide, or tribal land-wide
35 clearinghouse of information; and

36
37 (E) Assist in the Administrator's efforts to notify,
38 nominate, and select potential Community Working Group
39 members. [See SRA §104 at page 12]

1 **(k) MULTIPLE SOURCES OF RISK DEMONSTRATION**
2 **PROJECTS. —**

3
4 **(1) IN GENERAL. —** *The Administrator shall select at least 10*
5 *demonstration projects to be implemented over a five year*
6 *period, relating to the identification, assessment, management*
7 *of, and response to, multiple sources of risk in and around*
8 *designated facilities. These demonstration projects will examine*
9 *various approaches to protect communities exposed to such*
10 *multiple sources of risk. The Administrator shall promulgate*
11 *regulations that set forth the criteria by which demonstration*
12 *projects will be selected.*

13
14 **(2) ADDITIONAL HEALTH BENEFITS. —** *In the course of*
15 *conducting these demonstration projects, if a distinct pattern of*
16 *adverse health effects is identified in the surrounding*
17 *community, the Administrator shall consider the provision of*
18 *additional health benefits to the affected community, in an*
19 *effort to improve community health and welfare. Additional*
20 *benefits may include services such as consultations on health*
21 *information and health screening, the kind and availability of*
22 *which will be set forth in regulations promulgated by the*
23 *Administrator. These benefits shall not duplicate any activities*
24 *already undertaken at those facilities by the Agency for Toxic*
25 *Substances and Disease Registry under Section 104(i) of this*
26 *Act.*

27
28 **(3) MULTIPLE SOURCES OF RISK. —** *For the purposes of this*
29 *section, the term “multiple sources” of risk means—*

30
31 *(A) health risks from the existence of and exposure to*
32 *hazardous substances in the vicinity of a facility for which*
33 *a response action under this Act is considered, which may*
34 *present risks to persons who are also at risk due to*
35 *conditions at such a facility; or*

36
37 *(B) health risks from releases or threatened releases of a*
38 *hazardous substance, pollutant or contaminant from*
39 *facilities, permitted or otherwise, in the vicinity of a*
40 *facility for which a response action under this Act is being*
41 *considered, which may present risks to persons who are*
42 *also at risk due to the specific facility for which a*
43 *response action is being considered.*

1 **(4) CONSISTENCY WITH DESIGNATION OF**
2 **EMPOWERMENT ZONES.** — *The Administrator shall, to the*
3 *maximum extent practicable, select locations for conducting*
4 *demonstration projects under this subsection that coincide with*
5 *areas which have been identified as empowerment zones under*
6 *the Omnibus Budget Reconciliation Act of 1994 (P.L. 103-66).*

7
8 **(5) RIGHT TO PETITION.** — *Any person may petition the*
9 *Administrator to conduct a demonstration project under this*
10 *subsection at a specified location. Without regard to paragraph*
11 *(4), the Administrator may grant such a petition if:*

12
13 *(A) the petition sets out a reasonable basis in fact that the*
14 *population residing in the vicinity of the specified location*
15 *may be exposed to multiple sources of risk as described in*
16 *paragraph (3) and;*

17
18 *(B) the petition otherwise meets the requirements of*
19 *regulations promulgated by the Administrator which set*
20 *forth the criteria by which demonstration projects will be*
21 *selected.*

22
23 **(6) REVIEWS OF PETITIONS.** — *The Administrator's*
24 *determinations and reviews of petitions under this subsection*
25 *are committed to the Administrator's unreviewable discretion.*

26
27 **(7) INTERAGENCY COORDINATION.** — *The Administrator*
28 *shall coordinate with other departments or agencies as necessary*
29 *in carrying out the responsibilities of this subsection. [See SRA*
30 *§106 at page 13]*

31
32 **(l) REMOVAL ACTIONS.** — *Whenever the planning period for a*
33 *removal action is expected to be greater than six months, the*
34 *Administrator shall provide the community with notice of the*
35 *anticipated removal action and a public comment period of no less*
36 *than thirty days. [See SRA §506(b) at page 55]*
37

HIGH PRIORITY FOR DRINKING WATER SUPPLIES

SEC. 118. For purposes of taking action under section 104 or 106 and listing facilities on the National Priorities List, the President shall give a high priority to facilities where the release of hazardous substances or pollutants or contaminants has resulted in the closing of drinking water wells or has contaminated a principal drinking water supply.

RESPONSE ACTION CONTRACTORS

SEC. 119 (a) LIABILITY OF RESPONSE ACTION CONTRACTORS. —

(1) RESPONSE ACTION CONTRACTORS. — A person who is a response action contractor with respect to any release or threatened release of a hazardous substance or pollutant or contaminant from a vessel or facility shall not be liable under this title or under any other Federal law to any person for injuries, costs, damages, expenses, or other liability (including but not limited to claims for indemnification or contribution and claims by third parties for death, personal injury, illness or loss of or damage to property or economic loss) which results from such release or threatened release.

(2) NEGLIGENCE, ETC. — Paragraph (1) shall not apply in the case of a release that is caused by conduct of the response action contractor which is negligent, grossly negligent, or which constitutes intentional misconduct.

(3) EFFECT ON WARRANTIES; EMPLOYER LIABILITY. — Nothing in this subsection shall affect the liability of any person under any warranty under Federal, State, or common law. Nothing in this subsection shall affect the liability of an employer who is a response action contractor to any employee of such employer under any provision of law, including any provision of any law relating to worker's compensation.

(4) GOVERNMENTAL EMPLOYEES. — A state employee or an employee of a political subdivision who provides services relating to response action while acting within the scope of his authority as a governmental employee shall have the same exemption from liability (subject to the other provisions of this section) as is provided to the response action contractor under this section.

(b) SAVINGS PROVISIONS. —

(1) LIABILITY OF OTHER PERSONS. — The defense provided by section 107(b)(3) shall not be available to any potentially responsible party with respect to any costs or damages caused by any act or omission of a response action contractor. Except as provided in subsection (a)(4) and the preceding sentence, nothing in this section shall affect the liability under this Act or under any other Federal or State law of any person, other than a response action contractor.

1 (2) BURDEN OF PLAINTIFF. — Nothing in this section shall affect the
2 plaintiff's burden of establishing liability under this title.
3

4 (c) INDEMNIFICATION. —
5

6 (1) IN GENERAL. — The President may agree to hold harmless and
7 indemnify any response action contractor meeting the requirements of this
8 subsection against any liability (including the expenses of litigation or
9 settlement) for negligence arising out of the contractor's performance in
10 carrying out response action activities under this title, unless such liability
11 was caused by conduct of the contractor which was grossly negligent or
12 which constituted intentional misconduct.
13

14 (2) APPLICABILITY. — This subsection shall apply only with respect to a
15 response action carried out under written agreement with—
16

17 (A) the President;
18

19 (B) any Federal agency;
20

21 (C) a State or political subdivision which has entered into a contract
22 or cooperative agreement in accordance with section 104(d)(1) of
23 this title; or
24

25 (D) any potentially responsible party carrying out any agreement
26 under section 122 (relating to settlements) or section 106 (relating to
27 abatement).
28

29 (3) SOURCE OF FUNDING. — This subsection shall not be subject to
30 section 1301 or 1341 of title 31 of the United States Code or section 3732
31 of the Revised Statutes (41 U.S.C. 11) or to section 3 of the Superfund
32 Amendments and Reauthorization Act of 1986. For purposes of section
33 111, amounts expended pursuant to this subsection for indemnification of
34 any response action contractor (except with respect to federally owned or
35 operated facilities) shall be considered governmental response costs
36 incurred pursuant to section 104. If sufficient funds are unavailable in the
37 Hazardous Substance Superfund established under subchapter A of chapter
38 98 of the Internal Revenue Code of 1954 to make payments pursuant to
39 such indemnification or if the Fund is repealed, there are authorized to be
40 appropriated such amounts as may be necessary to make such payments.
41

1 (4) REQUIREMENTS. — An indemnification agreement may be provided
2 under this subsection only if the President determines that each of the
3 following requirements are met:
4

5 (A) The liability covered by the indemnification agreement exceeds
6 or is not covered by insurance available, at a fair and reasonable
7 price, to the contractor at the time the contractor enters into the
8 contract to provide response action, and adequate insurance to cover
9 such liability is not generally available at the time the response action
10 contract is entered into.
11

12 (B) The response action contractor has made diligent efforts to
13 obtain insurance coverage from non-Federal sources to cover such
14 liability.
15

16 (C) In the case of a response action contract covering more than one
17 facility, the response action contractor agrees to continue to make
18 such diligent efforts each time the contractor begins work under the
19 contract at a new facility.
20

21 (5) LIMITATIONS. —
22

23 (A) LIABILITY COVERED. — Indemnification under this
24 subsection shall apply only to response action contractor liability
25 which results from a release of any hazardous substance or pollutant
26 or contaminant if such release arises out of response action activities.
27

28 (B) DEDUCTIBLES AND LIMITS. — An indemnification
29 agreement under this subsection shall include deductibles and shall
30 place limits on the amount of indemnification to be made available.
31

32 (C) CONTRACTS WITH POTENTIALLY RESPONSIBLE
33 PARTIES. —
34

35 (i) DECISION TO INDEMNIFY. — In deciding whether to
36 enter into an indemnification agreement with a response action
37 contractor carrying out a written contract or agreement with
38 any potentially responsible party, the President shall determine
39 an amount which the potentially responsible party is able to
40 indemnify the contractor. The President may enter into such
41 an indemnification agreement only if the President determines
42 that such amount of indemnification is inadequate to cover any
43 reasonable potential liability of the contractor arising out of

1 the contractor's negligence in performing the contract or
2 agreement with such party. The President shall make the
3 determinations in the preceding sentences (with respect to the
4 amount and the adequacy of the amount) taking into account
5 the total net assets and resources of potentially responsible
6 parties with respect to the facility at the time of such
7 determinations.

8
9 (ii) CONDITIONS. — The President may pay a claim under
10 an indemnification agreement referred to in clause (i) for the
11 amount determined under clause (i) only if the contractor has
12 exhausted all administrative, judicial, and common law claims
13 for indemnification against all potentially responsible parties
14 participating in the clean-up of the facility with respect to the
15 liability of the contractor arising out of the contractor's
16 negligence in performing the contract or agreement with such
17 party. Such indemnification agreement shall require such
18 contractor to pay any deductible established under
19 subparagraph (B) before the contractor may recover any
20 amount from the potentially responsible party or under the
21 indemnification agreement.

22
23 (D) RCRA FACILITIES. — No owner or operator of a facility
24 regulated under the Solid Waste Disposal Act may be indemnified
25 under this subsection with respect to such facility.

26
27 (E) PERSONS RETAINED OR HIRED. — A person retained or
28 hired by a person described in subsection (e)(2)(B) shall be eligible
29 for indemnification under this subsection only if the President
30 specifically approves of the retaining or hiring of such person.

31
32 (6) COST RECOVERY. — For purposes of section 107, amounts expended
33 pursuant to this subsection for indemnification of any person who is a
34 response action contractor with respect to any release or threatened release
35 shall be considered a cost of response incurred by the United States
36 Government with respect to such release.

37
38 (7) REGULATIONS. — The President shall promulgate regulations for
39 carrying out the provisions of this subsection. Before promulgation of the
40 regulations, the President shall develop guidelines to carry out this section.
41 Development of such guidelines shall include reasonable opportunity for
42 public comment.

1 (8) STUDY. — The Comptroller General shall conduct a study in the fiscal
2 year ending September 30, 1989, on the application of this subsection,
3 including whether indemnification agreements under this subsection are
4 being used, the number of claims that have been filed under such
5 agreements, and the need for this subsection. The Comptroller General
6 shall report the findings of the study to Congress no later than September
7 30, 1989.

8
9 (d) EXCEPTION. — The exemption provided under subsection (a) and the
10 authority of the President to offer indemnification under subsection (c) shall not
11 apply to any person covered by the provisions of paragraph (1), (2), (3), or (4)
12 of section 107(a) with respect to the release or threatened release concerned if
13 such person would be covered by such provisions even if such person had not
14 carried out any actions referred to in subsection (e) of this section.

15
16 (e) DEFINITIONS. — For purposes of this section—

17
18 (1) RESPONSE ACTION CONTRACT. — The term "response action
19 contract" means any written contract or agreement entered into by a
20 response action contractor (as defined in paragraph (2)(A) of this
21 subsection) with—

22
23 (A) the President;

24
25 (B) any Federal agency;

26
27 (C) a State or political subdivision which has entered into a contract
28 or cooperative agreement in accordance with section 104(d)(1) of
29 this Act; or

30
31 (D) any potentially responsible party carrying out an agreement
32 under section 106 or 122; to provide any remedial action under this
33 Act at a facility listed on the National Priorities List, or any removal
34 under this Act, with respect to any release or threatened release of a
35 hazardous substance or pollutant or contaminant from the facility or
36 to provide any evaluation, planning, engineering, surveying and
37 mapping, design, construction, equipment, or any ancillary services
38 thereto for such facility.

39
40 (2) RESPONSE ACTION CONTRACTOR. — The term "response action
41 contractor" means—
42

1 (A) any—

2
3 (i) person who enters into a response action contract with
4 respect to any release or threatened release of a hazardous
5 substance or pollutant or contaminant from a facility and is
6 carrying out such contract; and

7
8 (ii) person, public or nonprofit private entity, conducting a
9 field demonstration pursuant to section 311(b); and

10
11 (iii) Recipients of grants (including sub-grantees) under
12 section 126 for the training and education of workers who are
13 or may be engaged in activities related to hazardous waste
14 removal, containment, or emergency response under this Act;
15 and

16
17 (B) any person who is retained or hired by a person described in
18 subparagraph (A) to provide any services relating to a response
19 action; and

20
21 (C) any surety who after October 16, 1990, and before January 1,
22 1996, provides a bid, performance or payment bond to a response
23 action contractor, and begins activities to meet its obligations under
24 such bond, but only in connection with such activities or obligations.

25
26 (3) INSURANCE. — The term "insurance" means liability insurance which
27 is fair and reasonably priced, as determined by the President, and which is
28 made available at the time the contractor enters into the response action
29 contract to provide response action.

30
31 (f) COMPETITION. — Response action contractors and subcontractors for
32 program management, construction management, architectural and engineering,
33 surveying and mapping, and related services shall be selected in accordance with
34 title IX of the Federal Property and Administrative Services Act of 1949. The
35 Federal selection procedures shall apply to appropriate contracts negotiated by all
36 Federal governmental agencies involved in carrying out this Act. Such
37 procedures shall be followed by response action contractors and subcontractors.

38
39 (g) SURETY BONDS. —

40
41 (1) If under the Act of August 24, 1935 (40 U.S.C. 270a—270d),
42 commonly referred to as the "Miller Act", surety bonds are required for
43 any direct Federal procurement of any response action contract and are not

1 waived pursuant to the Act of April 29, 1941 (40 U.S.C. 270e—270f), they
2 shall be issued in accordance with such Act of August 24, 1935.

3
4 (2) If under applicable Federal law surety bonds are required for any
5 direct Federal procurement of any response action contract, no right of
6 action shall accrue on the performance bond issued on such response action
7 contract to or for the use of any person other than the obligee named in the
8 bond.

9
10 (3) If under applicable Federal law surety bonds are required for any
11 direct Federal procurement of any response action contract, unless
12 otherwise provided for by the procuring agency in the bond, in the event
13 of a default, the surety's liability on a performance bond shall be only for
14 the cost of completion of the contract work in accordance with the plans
15 and specifications less the balance of funds remaining to be paid under the
16 contract, up to the penal sum of the bond. The surety shall in no event be
17 liable on bonds to indemnify or compensate the obligee for loss or liability
18 arising from personal injury or property damage whether or not caused by
19 a breach of the bonded contract.

20
21 (4) Nothing in this subsection shall be construed as preempting, limiting,
22 superseding, affecting, applying to, or modifying any State laws,
23 regulations, requirements, rules, practices or procedures. Nothing in this
24 subsection shall be construed as affecting, applying to, modifying, limiting,
25 superseding, or preempting any rights, authorities, liabilities, demands,
26 actions, causes of action, losses, judgments, claims, statutes of limitation, or
27 obligations under Federal or State law, which do not arise on or under the
28 bond.

29
30 (5) This subsection shall not apply to bonds executed before October 17,
31 1990, or after December 31, 1995.

FEDERAL ENTITIES AND FACILITIES [See SRA §403(c) at page 51]

SEC. 120. (a) APPLICATION OF ACT TO FEDERAL GOVERNMENT. —

(1) IN GENERAL. — Each department, agency, and instrumentality of the United States (including the executive, legislative, and judicial branches of government) shall be subject to, and comply with, this Act in the same manner and to the same extent, both procedurally and substantively, as any non governmental entity, including liability under section 107 of this Act *the right to contribution protection set forth in sections 113 and 122, when such department, agency, or instrumentality resolves its share of liability under this Act and liability for all Federal and civil and administrative penalties and fines imposed under this Act, regardless of whether such penalties and fines are punitive or coercive in nature or are imposed for isolated or continuing violations.*¹³ Nothing in this section shall be construed to affect the liability of any *other* person or entity under sections 106 and 107. *The waiver of immunity in this section does not encompass uniquely governmental actions such as —* [See SRA §403(d)(1) at page 52]; [See SRA §403(d)(2) at page 52]

(A) *any actions of any department, agency or instrumentality, except for official seizure of or holding title to a facility, taken pursuant to Federal authority to regulate the economy in preparation for, during, or otherwise in connection with war through the use and implementation of national priority rating systems, national wage, profit and price incentives or controls, or otherwise to mobilize the national economy for war-related production; or*

(B) *any actions of any department, agency, or instrumentality taken in response to a natural disaster pursuant to the Emergency Flood Control Work Act (33 U.S.C. 701(n)), or the Disaster Relief Act of 1974 (42 U.S.C. 5121 et seq.).* [See SRA §403(d)(2) at page 52]

(2) APPLICATION OF REQUIREMENTS TO FEDERAL FACILITIES. — All guidelines, rules, regulations, and criteria which are applicable to preliminary assessments carried out under this Act for

¹³Section 403(d)(1) of the Administrative bill (page 52) says to place certain language after the word "title" in section 120(a)(1) of CERCLA. There is some confusion here in that some printed versions of CERCLA use the word "title" at the end of the first sentence of paragraph (d)(1) while the official version uses the word "Act." The suggested language has been incorporated as if the first sentence of section 120 (d)(1) ends in the word "title."

1 facilities at which hazardous substances are located, applicable to
2 evaluations of such facilities under the National Contingency Plan,
3 applicable to inclusion on the National Priorities List, or applicable to
4 remedial actions at such facilities shall also be applicable to facilities which
5 are owned or operated by a department, agency, or instrumentality of the
6 United States in the same manner and to the extent as such guidelines, rules,
7 regulations, and criteria are applicable to other facilities. No department,
8 agency, or instrumentality of the United States may adopt or utilize any
9 such guidelines, rules, regulations, or criteria which are inconsistent with
10 the guidelines, rules, regulations, and criteria established by the
11 Administrator under this Act.

12
13 (3) EXCEPTIONS. — This subsection shall not apply to the extent
14 otherwise provided in this section with respect to applicable time periods.
15 This subsection shall also not apply to any requirements relating to
16 bonding, insurance, or financial responsibility. Nothing in this Act shall be
17 construed to require a State to comply with section 104(c)(3) in the case of
18 a facility which is owned or operated by any department, agency, or
19 instrumentality of the United States.

20
21 (4) STATE LAWS. — State laws concerning removal and remedial action,
22 including State laws regarding enforcement, shall apply to removal and
23 remedial action at facilities *currently* owned or operated by a department,
24 agency, or instrumentality of the United States *in the following*
25 *circumstances:* [See SRA §403(e)(1) at page 53]; [See SRA §403(e)(2)
26 at page 53]

27
28 (A) when such facilities are not included on the National Priorities
29 List.

30
31 (B) *when such facilities are included on the National*
32 *Priorities List but are specifically referred to the State by*
33 *the Administrator pursuant to the provisions of section*
34 *127 of this Act; or*

35
36 (C) *when such laws are part of an authorized program*
37 *approved by the Administrator pursuant to section 127 of*
38 *this Act, and such facilities are included on the National*
39 *Priorities List and are to be addressed by the State*
40 *authorized program pursuant to section 127 of this Act.*

41
42 *Each department, agency, or instrumentality of the United States*
43 *shall be subject to State requirements, both substantive and*

1 *procedural, respecting liability for the costs of responding to releases*
2 *or threats of releases of hazardous substances at non-federally owned*
3 *facilities referred to the State pursuant to section 127 of this Act, or*
4 *such requirements that are part of a State authorized program for*
5 *non-federally owned facilities being addressed under a State*
6 *authorized program pursuant to section 127 of this Act. The preceding*
7 *[sentence] sentences shall not apply to the extent a State law would apply any*
8 *standard or requirement to such facilities which is more stringent than the*
9 *standards and requirements applicable to facilities which are not owned or*
10 *operated by any such department, agency, or instrumentality. This waiver of*
11 *immunity for such facilities shall include all civil and administrative*
12 *penalties and fines imposed under such laws, regardless of whether*
13 *such penalties and fines are punitive or coercive in nature or are*
14 *imposed for isolated or continuing violations. Neither the United*
15 *States, nor any agent, employee or officer thereof, shall be immune*
16 *or exempt from any process or sanction of any State or Federal Court*
17 *with respect to the enforcement of any appropriate relief under such*
18 *laws, but the United States shall be entitled to remove any action*
19 *filed in state court against any department, agency, instrumentality,*
20 *employee or officer of the United States to the appropriate Federal*
21 *district court. No agent, employee, or officer of the United States*
22 *shall be personally liable for any civil or administrative penalty*
23 *under any Federal or State law with respect to any act or omission*
24 *within the scope of the official duties of the agent, employee, or*
25 *officer. All funds collected by a State from the Federal Government*
26 *from penalties and fines imposed for violation of any substantive or*
27 *procedural requirement referred to in this subsection shall be used by*
28 *the State only for projects designed to improve or protect the*
29 *environment or to defray the costs of environmental protection or*
30 *enforcement.*¹⁴ *[See SRA §403(e)(3) at page 53]; [See SRA §403(e)(4) at*
31 *page 53]; [See SRA §403(e)(5) at page 53]*

32
33 (b) NOTICE. — Each department, agency, and instrumentality of the United
34 States shall add to the inventory of Federal agency hazardous waste facilities
35 required to be submitted under section 3016 of the Solid Waste Disposal Act (in
36 addition to the information required under section 3016(a)(3) of such Act)
37 information on contamination from each facility owned or operated by the
38 department, agency, or instrumentality if such contamination affects contiguous

¹⁴Section 403(e)(5) of the Administration bill (page 53) says to add new language "at the end of the section." However, it is not clear whether this means at the end of CERCLA §120 or §120(a)(4), which is the subject matter of §403(e)(5) of the bill. In this strike-out version, the new language has been inserted at the end of §120(a)(4).

1 or adjacent property owned by the department, agency, or instrumentality or by
2 any other person, including a description of the monitoring data obtained.

3
4 (c) FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET. —
5 The Administrator shall establish a special Federal Agency Hazardous Waste
6 Compliance Docket (hereinafter in this section referred to as the "docket") which
7 shall contain each of the following:

8
9 (1) All information submitted under section 3016 of the Solid Waste
10 Disposal Act and subsection (b) of this section regarding any Federal
11 facility and notice of each subsequent action taken under this Act with
12 respect to the facility.

13
14 (2) Information submitted by each department, agency, or instrumentality
15 of the United States under section 3005 or 3010 of such Act.

16
17 (3) Information submitted by the department, agency, or instrumentality
18 under section 103 of this Act.

19
20 The docket shall be available for public inspection at reasonable times. Six
21 months after establishment of the docket and every 6 months thereafter, the
22 Administrator shall publish in the Federal Register a list of the Federal facilities
23 which have been included in the docket during the immediately preceding 6-
24 month period. Such publication shall also indicate where in the appropriate
25 regional office of the Environmental Protection Agency additional information
26 may be obtained with respect to any facility on the docket. The Administrator
27 shall establish a program to provide information to the public with respect to
28 facilities which are included in the docket under this subsection.

29
30 (d) ASSESSMENT AND EVALUATION. — Not later than 18 months after the
31 enactment of the Superfund Amendments and Reauthorization Act of 1986, the
32 Administrator shall take steps to assure that a preliminary assessment is conducted
33 for each facility on the docket. Following such preliminary assessment, the
34 Administrator shall, where appropriate —

35
36 (1) evaluate such facilities in accordance with the criteria established in
37 accordance with section 105 under the National Contingency Plan for
38 determining priorities among releases; and

39
40 (2) include such facilities on the National Priorities List maintained under
41 such plan if the facility meets such criteria.
42

1 Such criteria shall be applied in the same manner as the criteria are applied to
2 facilities which are owned or operated by other persons. Evaluation and listing
3 under this subsection shall be completed not later than 30 months after such date
4 of enactment. Upon the receipt of a petition from the Governor of any State, the
5 Administrator shall make such an evaluation of any facility included in the
6 docket.

7
8 (e) REQUIRED ACTION BY DEPARTMENT. —

9
10 (1) RI/FS. — Not later than 6 months after the inclusion of any facility on
11 the National Priorities List, the department, agency, or instrumentality
12 which owns or operates such facility shall, in consultation with the
13 Administrator and appropriate State authorities, commence a remedial
14 investigation and feasibility study for such facility. In the case of any
15 facility which is listed on such agency, or instrumentality which owns or
16 operates such facility shall, in consultation with the Administrator and
17 appropriate State authorities, commence such an investigation and study for
18 such facility within one year after such date of enactment. The
19 Administrator and appropriate State authorities shall publish a timetable
20 and deadlines for expeditious completion of such investigation and study.

21
22 (2) COMMENCEMENT OF REMEDIAL ACTION; INTERAGENCY
23 AGREEMENT. — The Administrator shall review the results of each
24 investigation and study conducted as provided in paragraph (1). Within
25 180 days thereafter, the head of the department, agency, or instrumentality
26 concerned shall enter into an interagency agreement with the Administrator
27 for the expeditious completion by such department, agency, or
28 instrumentality of all necessary remedial action at such facility. Substantial
29 continuous physical onsite remedial action shall be commenced at each
30 facility not later than 15 months after completion of the investigation and
31 study. All such interagency agreements, including review of alternative
32 remedial action plans and selection of remedial action, shall comply with
33 the public participation requirements of section 117.

34
35 (3) COMPLETION OF REMEDIAL ACTIONS. — Remedial actions at
36 facilities subject to interagency agreements under this section shall be
37 completed as expeditiously as practicable. Each agency shall include in its
38 annual budget submissions to the Congress a review of alternative agency
39 funding which could be used to provide for the costs of remedial action.
40 The budget submission shall also include a statement of the hazard posed by
41 the facility to human health, welfare, and the environment and identify the
42 specific consequences of failure to begin and complete remedial action.

1 (4) *A provision allowing for the participation of other*
2 *responsible parties in the response action.*¹⁵ [See SRA §601(a) at
3 page 97]
4

5 (4) CONTENTS OF AGREEMENT. — Each interagency agreement under
6 this subsection shall include, but shall not be limited to, each of the
7 following:
8

9 (A) A review of alternative remedial actions and selection of a
10 remedial action by the head of the relevant department, agency, or
11 instrumentality and the Administrator or, if unable to reach
12 agreement on selection of a remedial action, selection by the
13 Administrator.
14

15 (B) A schedule for the completion of each such remedial action.
16

17 (C) Arrangements for long-term operation and maintenance of the
18 facility.
19

20 (5) ANNUAL REPORT. — Each department, agency, or instrumentality
21 responsible for compliance with this section shall furnish an annual report
22 to the Congress concerning its progress in implementing the requirements
23 of this section. Such reports shall include, but shall not be limited to, each
24 of the following items:
25

26 (A) A report on the progress in reaching interagency agreements
27 under this section.
28

29 (B) The specific cost estimates and budgetary proposals involved in
30 each interagency agreement.
31

32 (C) A brief summary of the public comments regarding each
33 proposed interagency agreement.
34

35 (D) A description of the instances in which no agreement was
36 reached.
37

38 (E) A report on progress in conducting investigations and studies
39 under paragraph (1).
40

¹⁵Section 601(a) of the Administration bill (page 97) says to add a new paragraph (4) to section 120(e) of CERCLA, but it does not say anything about either striking the current (4) or redesignating it. Therefore, there are two paragraphs (4) in this strike-out version.

1 (F) A report on progress in conducting remedial actions.

2
3 (G) A report on progress in conducting remedial action at facilities
4 which are not listed on the National Priorities List.

5
6 With respect to instances in which no agreement was reached within the
7 required time period, the department, agency, or instrumentality filing the
8 report under this paragraph shall include in such report an explanation of
9 the reasons why no agreement was reached. The annual report required by
10 this paragraph shall also contain a detailed description on a State-by-State
11 basis of the status of each facility subject to this section, including a
12 description of the hazard presented by each facility, plans and schedules for
13 initiating and completing response action, enforcement status (where
14 appropriate), and an explanation of any postponements or failure to
15 complete response action. Such reports shall also be submitted to the
16 affected States

17
18 (6) SETTLEMENTS WITH OTHER PARTIES. — If the Administrator, in
19 consultation with the head of the relevant department, agency, or
20 instrumentality of the United States, determines that remedial investigations
21 and feasibility studies or remedial action will be done properly at the
22 Federal facility by another potentially responsible party within the
23 deadlines provided in paragraphs (1), (2), and (3) of this subsection, the
24 Administrator may enter into an agreement with such party under section
25 122 (relating to settlements). Following approval by the Attorney General
26 of any such agreement relating to a remedial action, the agreement shall be
27 entered in the appropriate United States district court as a consent decree
28 under section 106 of this Act.

29
30 (7) *EXCEPTION TO REQUIRED ACTION.* — *No department,*
31 *agency, and instrumentality of the United States that owns or*
32 *operates a facility over which the department, agency, or*
33 *instrumentality exercised no regulatory or other control over*
34 *activities that directly or indirectly resulted in a release or*
35 *threat of a release of a hazardous substance shall be subject to*
36 *the requirements of paragraphs (1) through (6) except (5)(F)*
37 *and (G) of this subsection if the department, agency, or*
38 *instrumentality demonstrates to the satisfaction of the*
39 *Administrator that —*

40
41 (A) *no department, agency, or instrumentality was the*
42 *primary or sole source or cause of a release or threat of*
43 *release of a hazardous substance at the facility;*

1 (B) the activities either directly or indirectly resulting in
2 a release or threat of a release of a hazardous substance at
3 the facility were pursuant to a statutory authority and
4 occurred prior to 1976; and

5
6 (C) the person or persons primarily or solely responsible
7 for such release or threat of release are financially viable,
8 and capable of performing or financing the response action
9 at the facility.

10
11 In the event the above conditions are not met, the applicable
12 terms of section 120(e) apply to the department, agency, or
13 instrumentality of the United States at the facility. Upon
14 determination by the Administrator that a department, agency,
15 or instrumentality qualifies for the exception provided by this
16 paragraph, the head of such department, agency, or
17 instrumentality may exercise enforcement authority pursuant
18 under section 106 (in addition to any other delegated
19 authorities). To the extent a person who has been issued an
20 order under the authority of this paragraph seeks
21 reimbursement under the provisions of section 106, the relevant
22 department, agency, or instrumentality, and not the Fund, shall
23 be the source of any appropriate reimbursement. If the
24 Administrator determines that the relevant department, agency,
25 or instrumentality has failed to seek the performance of
26 response actions by responsible parties within 12 months after
27 the facility has been listed on the National Priorities List, the
28 Administrator may void the exception provided by this
29 paragraph and the applicable provisions of section 120(e) would
30 apply to the department, agency or instrumentality at the
31 facility. [See SRA §601(b) at page 97]

32
33 (f) STATE AND LOCAL PARTICIPATION. — The Administrator and each
34 department, agency, or instrumentality responsible for compliance with this
35 section shall afford to relevant State and local officials the opportunity to
36 participate in the planning and selection of the remedial action, including but not
37 limited to the review of all applicable data as it becomes available and the
38 development of studies, reports, and action plans. In the case of State officials,
39 the opportunity to participate shall be provided in accordance with section 121.

40
41 (g) TRANSFER OF AUTHORITIES. — Except for authorities which are
42 delegated by the Administrator to an officer or employee of the Environmental
43 Protection Agency and except as provided in section 127, no authority

1 vested in the Administrator under this section may be transferred, by executive
2 order of the President or otherwise, to any other officer or employee of the
3 United States or to any other person. [See SRA §202 at page 32]

4
5 (h) PROPERTY TRANSFERRED BY FEDERAL AGENCIES. —

6
7 (1) NOTICE. — After the last day of the 6-month period beginning on the
8 effective date of regulations under paragraph (2) of this subsection,
9 whenever any department, agency, or instrumentality of the United States
10 enters into any contract for the sale or other transfer of real property
11 which is owned by the United States and on which any hazardous substance
12 was stored for one year or more, known to have been released, or disposed
13 of, the head of such department, agency, or instrumentality shall include in
14 such contract notice of the type and quantity of such hazardous substance
15 and notice of the time at which such storage, release, or disposal took
16 place, to the extent such information is available on the basis of a complete
17 search of agency files.

18
19 (2) FORM OF NOTICE; REGULATIONS. — Notice under this subsection
20 shall be provided in such form and manner as may be provided in
21 regulations promulgated by the Administrator. As promptly as practicable
22 after the enactment of this subsection but not later than 18 months after the
23 date of such enactment, and after consultation with the Administrator of the
24 General Services Administration, the Administrator shall promulgate
25 regulations regarding the notice required to be provided under this
26 subsection.

27
28 (3) CONTENTS OF CERTAIN DEEDS. — After the last day of the 6-
29 month period beginning on the effective date of regulations under
30 paragraph (2) of this subsection, in the case of any real property owned by
31 the United States on which any hazardous substance was stored for one year
32 or more, known to have been released, or disposed of, each deed entered
33 into for the transfer of such property by the United States to any other
34 person or entity shall contain—

35
36 (A) to the extent such information is available on the basis of a
37 complete search of agency files—

38
39 (i) a notice of the type and quantity of such hazardous
40 substances,
41

(ii) notice of the time at which such storage, release, or disposal took place, and

(iii) a description of the remedial action taken, if any;

(B) a covenant warranting that—

(i) all remedial action necessary to protect human health and the environment with respect to any such substance remaining on the property has been taken before the date of such transfer, and

(ii) any additional remedial action found to be necessary after the date of such transfer shall be conducted by the United States. The requirements of subparagraph (B) shall not apply in any case in which the person or entity to whom the property is transferred is a potentially responsible party with respect to such real property; and

(C) a clause granting the United States access to the property in any case in which remedial action or corrective action is found to be necessary after the date of such transfer.

The requirements of subparagraph (B) shall not apply in any case in which the person or entity to whom the property is transferred is a potentially responsible party with respect to such real property. For purposes of subparagraph (B)(i), all remedial action described in such subparagraph has been taken if the construction and installation of an approved remedial design has been completed, and the remedy has been demonstrated to the Administrator to be operating properly and successfully. The carrying out of long-term pumping and treating, or operation and maintenance, after the remedy has been demonstrated to the Administrator to be operating properly and successfully does not preclude the transfer of the property. *If the property being transferred is part of a facility subject to a State authorization or a referral under section 127, all demonstrations required by this paragraph to be made to the Administrator shall be made to the appropriate State official.* [See SRA §203 at page 33]

(4) IDENTIFICATION OF UNCONTAMINATED PROPERTY. —

(A) In the case of real property to which this paragraph applies (as set forth in subparagraph (E), the head of the department, agency, or

1 instrumentality of the United States with jurisdiction over the
2 property shall identify the real property on which no hazardous
3 substances and no petroleum products or their derivatives were
4 ~~[stored for one year or more,]~~ known to have been released, or
5 disposed of. Such identification shall be based on an investigation of
6 the real property to determine or discover the obviousness of the
7 presence or likely presence of a release or threatened release of any
8 hazardous substance or any petroleum product or its derivatives,
9 including aviation fuel and motor oil, on the real property. The
10 identification shall consist, at a minimum, of a review of each of the
11 following sources of information concerning the current and
12 previous uses of the real property: [See SRA §603 at page 98]

13
14 (i) A detailed search of Federal Government records
15 pertaining to the property.

16
17 (ii) Recorded chain of title documents regarding the real
18 property.

19
20 (iii) Aerial photographs that may reflect prior uses of the real
21 property and that are reasonably obtainable through State or
22 local government agencies.

23
24 (iv) A visual inspection of the real property and any buildings,
25 structures, equipment, pipe, pipeline, or other improvements
26 on the real property, and a visual inspection of properties
27 immediately adjacent to the real property.

28
29 (v) A physical inspection of property adjacent to the real
30 property, to the extent permitted by owners or operators of
31 such property.

32
33 (vi) Reasonably obtainable Federal, State, and local
34 government records of each adjacent facility where there has
35 been a release of any hazardous substance or any petroleum
36 product or its derivatives, including aviation fuel and motor
37 oil, and which is likely to cause or contribute to a release or
38 threatened release of any hazardous substance or any
39 petroleum product or its derivatives, including aviation fuel
40 and motor oil, on the real property.

41
42 (vii) Interviews with current or former employees involved in
43 operations on the real property.

1 Such identification shall also be based on sampling, if appropriate
2 under the circumstances. The results of the identification shall be
3 provided immediately to the Administrator and State and local
4 government officials and made available to the public.
5

6 (B) The identification required under subparagraph (A) is not
7 complete until concurrence in the results of the identification is
8 obtained, in the case of real property that is part of a facility on the
9 National Priorities List, from the Administrator, or, in the case of
10 real property that is not part of a facility on the National Priorities
11 List, from the appropriate State official. In the case of a
12 concurrence which is required from a State official, the concurrence
13 is deemed to be obtained if, within 90 days after receiving a request
14 for the concurrence, the State official has not acted (by either
15 concurring or declining to concur) on the request for concurrence.
16

17 (C) (i) Except as provided in clauses (ii), (iii), and (iv), the
18 identification and concurrence required under subparagraphs
19 (A) and (B), respectively, shall be made at least 6 months
20 before the termination of operations on the real property.
21

22 (ii) In the case of real property described in subparagraph
23 (E)(i)(II) on which operations have been closed or realigned
24 or scheduled for closure or realignment pursuant to a base
25 closure law described in subparagraph (E)(ii)(I) or (E)(ii)(II)
26 by the date of the enactment of the Community Environmental
27 Response Facilitation Act the identification and concurrence
28 required under subparagraphs (A) and (B), respectively, shall
29 be made not later than 18 months after such date of enactment.
30

31 (iii) In the case of real property described in subparagraph
32 (E)(i)(II) on which operations are closed or realigned or
33 become scheduled for closure or realignment pursuant to the
34 base closure law described in subparagraph (E)(ii)(II) after the
35 date of the enactment of the Community Environmental
36 Response Facilitation Act, the identification and concurrence
37 required under subparagraphs (A) and (B), respectively, shall
38 be made not later than 18 months after the date by which a
39 joint resolution disapproving the closure or realignment of the
40 real property under section 2904(b) of such base closure law
41 must be enacted, and such a joint resolution has not been
42 enacted.
43

(iv) In the case of real property described in subparagraphs (E)(i)(II) on which operations are closed or realigned pursuant to a base closure law described in subparagraph (E)(ii)(III) or (E)(ii)(IV), the identification and concurrence required under subparagraphs (A) and (B), respectively, shall be made not later than 18 months after the date on which the real property is selected for closure or realignment pursuant to such a base closure law.

(D) In the case of the sale or other transfer of any parcel of real property identified under subparagraph (A), the deed entered into for the sale or transfer of such property by the United States to any other person or entity shall contain—

(i) a covenant warranting that any response action or corrective action found to be necessary after the date of such sale or transfer shall be conducted by the United States; and

(ii) a clause granting the United States access to the property in any case in which a response action or corrective action is found to be necessary after such date at such property, or such access is necessary to carry out a response action or corrective action on adjoining property.

(E) (i) This paragraph applies to—

(I) real property owned by the United States and on which the United States plans to terminate Federal Government operations, other than real property described in subclause (II); and

(II) real property that is or has been used as a military installation and on which the United States plans to close or realign military operations pursuant to a base closure law.

(ii) For purposes of this paragraph, the term "base closure law" includes the following:

(I) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526; 10 U.S.C. 2687 note).

(II) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note).

(III) Section 2687 of title 10, United States Code.

(IV) Any provision of law authorizing the closure or realignment of a military installation enacted on or after the date of enactment of the Community Environmental Response Facilitation Act.

(F) Nothing in this paragraph shall affect, preclude, or otherwise impair the termination of Federal Government operations on real property owned by the United States.

(5) NOTIFICATION OF STATES REGARDING CERTAIN LEASES. — In the case of real property owned by the United States, on which any hazardous substance or any petroleum product or its derivatives (including aviation fuel and motor oil) was stored for one year or more, known to have been released, or disposed of, and on which the United States plans to terminate Federal Government operations, the head of the department, agency, or instrumentality of the United States with jurisdiction over the property shall notify the State in which the property is located of any lease entered into by the United States that will encumber the property beyond the date of termination of operations on the property. Such notification shall be made before entering into the lease and shall include the length of the lease, the name of person to whom the property is leased, and a description of the uses that will be allowed under the lease of the property and buildings and other structures on the property.

(6) AGREEMENTS TO TRANSFER BY DEED. — *Nothing in this subsection shall be construed to prohibit the head of the department, agency, or instrumentality of the United States from entering into an agreement to transfer by deed real property or facilities prior to the entering of such deed. [See SRA §603 at page 99]*

(i) OBLIGATIONS UNDER SOLID WASTE DISPOSAL ACT. — Nothing in this section shall affect or impair the obligation of any department, agency, or instrumentality of the United States to comply with any requirement of the Solid Waste Disposal Act (including corrective action requirements).

1 (j) NATIONAL SECURITY. —

2
3 (1) SITE SPECIFIC PRESIDENTIAL ORDERS. — The President may
4 issue such orders regarding response actions at any specified site or facility
5 of the Department of Energy or the Department of Defense as may be
6 necessary to protect the national security interests of the United States at
7 that site or facility. Such orders may include, where necessary to protect
8 such interests, an exemption from any requirement contained in this title or
9 under title III of the Superfund Amendments and Reauthorization Act of
10 1986 *or any State law applicable under Section 120(a)(4)* with
11 respect to the site or facility concerned. The President shall notify the
12 Congress within 30 days of the issuance of an order under this paragraph
13 providing for any such exemption. Such notification shall include a
14 statement of the reasons for the granting of the exemption. An exemption
15 under this paragraph shall be for a specified period which may not exceed
16 one year. Additional exemptions may be granted, each upon the
17 President's issuance of a new order under this paragraph for the site or
18 facility concerned. Each such additional exemption shall be for a specified
19 period which may not exceed one year. It is the intention of the Congress
20 that whenever an exemption is issued under this paragraph the response
21 action shall proceed as expeditiously as practicable. The Congress shall be
22 notified periodically of the progress of any response action with respect to
23 which an exemption has been issued under this paragraph. No exemption
24 shall be granted under this paragraph due to lack of appropriation unless
25 the President shall have specifically requested such appropriation as a part
26 of the budgetary process and the Congress shall have failed to make
27 available such requested appropriation. [See SRA §403(f) at page 54]

28
29 (2) CLASSIFIED INFORMATION. — Notwithstanding any other
30 provision of law, all requirements of the Atomic Energy Act and all
31 Executive orders concerning the handling of restricted data and national
32 security information, including "need to know" requirements, shall be
33 applicable to any grant of access to classified information under the
34 provisions of this Act or under title III of the Superfund Amendments and
35 Reauthorization Act of 1986.¹⁶

¹⁶See footnote 14, *supra*.

CLEANUP STANDARDS

SEC. 121. (a) SELECTION OF REMEDIAL ACTION. — The President shall select appropriate remedial actions determined to be necessary to be carried out under section 104 or secured under section 106 which are in accordance with this section and, to the extent practicable, the national contingency plan, and which provide for cost-effective response. In evaluating the cost effectiveness of proposed alternative remedial actions, the President shall take into account the total short- and long-term costs of such actions, including the costs of operation and maintenance for the entire period during which such activities will be required.

~~[(b) GENERAL RULES. —~~

~~(1) Remedial actions in which treatment which permanently and significantly reduces the volume, toxicity or mobility of the hazardous substances, pollutants, and contaminants is a principal element, are to be preferred over remedial actions not involving such treatment. The offsite transport and disposal of hazardous substances or contaminated materials without such treatment should be the least favored alternative remedial action where practicable treatment technologies are available. The President shall conduct an assessment of permanent solutions and alternative treatment technologies or resource recovery technologies that, in whole or in part, will result in a permanent and significant decrease in the toxicity, mobility, or volume of the hazardous substance, pollutant, or contaminant. In making such assessment, the President shall specifically address the long-term effectiveness of various alternatives. In assessing alternative remedial actions, the President shall, at a minimum, take into account:~~

~~(A) the long-term uncertainties associated with land disposal;~~

~~(B) the goals, objectives, and requirements of the Solid Waste Disposal Act;~~

~~(C) the persistence, toxicity, mobility, and propensity to bioaccumulate of such hazardous substances and their constituents;~~

1 ~~(D) short- and long-term potential for adverse health~~
2 ~~effects from human exposure;~~

3
4 ~~(E) long-term maintenance costs;~~

5
6 ~~(F) the potential for future remedial action costs if the~~
7 ~~alternative remedial action in question were to fail; and~~

8
9 ~~(G) the potential threat to human health and the~~
10 ~~environment associated with excavation, transportation,~~
11 ~~and redisposal, or containment.~~

12
13 ~~The President shall select a remedial action that is protective of~~
14 ~~human health and the environment, that is cost effective, and~~
15 ~~that utilizes permanent solutions and alternative treatment~~
16 ~~technologies or resource recovery technologies to the maximum~~
17 ~~extent practicable. If the President selects a remedial action not~~
18 ~~appropriate for a preference under this subsection, the~~
19 ~~President shall publish an explanation as to why a remedial~~
20 ~~action involving such reductions was not selected.~~

21
22 ~~(2) The President may select an alternative remedial action~~
23 ~~meeting the objectives of this subsection whether or not such~~
24 ~~action has been achieved in practice at any other facility or site~~
25 ~~that has similar characteristics. In making such a selection, the~~
26 ~~President may take into account the degree of support for such~~
27 ~~remedial action by parties interested in such site.]~~

28
29 **(b) GENERAL RULES. —**

30
31 **(1) SELECTION OF PROTECTIVE REMEDIES. —** Remedies
32 *selected at individual facilities shall be protective of human*
33 *health and the environment. Whether a response action*
34 *requires remediation through treatment, containment, a*
35 *combination of treatment and containment, or other means, shall*
36 *be determined through the evaluation of remedial alternatives.*

37
38 **(2) LAND USE. —** *In selecting a remedy, the President shall*
39 *take into account the reasonably anticipated future uses of land*
40 *at a facility as required by this Act.*
41

1 **(3) APPROPRIATE REMEDIAL ACTION. —**

2
3 **(A) The President shall identify and select an appropriate**
4 **remedy utilizing treatment, containment, other remedial**
5 **measures, or any combination thereof, that is protective of**
6 **human health and the environment and achieves the degree**
7 **of cleanup determined under section 121(d), taking into**
8 **account the following factors —**

9
10 **(i) the effectiveness of the remedy;**

11
12 **(ii) the long-term reliability of the remedy, that is,**
13 **its capability to achieve long-term protection of**
14 **human health and the environment;**

15
16 **(iii) any risk posed by the remedy to the affected**
17 **community, to those engaged in the cleanup effort,**
18 **and to the environment;**

19
20 **(iv) the acceptability of the remedy to the affected**
21 **community; and**

22
23 **(v) the reasonableness of the cost of the remedy in**
24 **relation to the preceding factors (i) through (iv).**

25
26 **(B) INNOVATIVE REMEDIES. — If an otherwise**
27 **appropriate treatment remedy is available only at a**
28 **disproportionate cost and the President determines that an**
29 **appropriate treatment remedy is likely to become available**
30 **within a reasonable period of time, the President may**
31 **select an interim containment remedy. A selected interim**
32 **containment remedy shall include adequate monitoring to**
33 **ensure the continued integrity of the containment system.**
34 **If an appropriate treatment remedy becomes available**
35 **within that period of time, that remedy shall be required.**

36
37 **(C) HOT SPOTS. — In evaluating a facility for a**
38 **permanent containment remedy, if the President**
39 **determines, based on standard site investigation, that a**
40 **discrete area within a facility is a “hot spot” (as defined in**
41 **this paragraph), the President shall select a remedy for the**
42 **hot spot with a preference for treatment, unless he**
43 **determines, based on treatability studies and other**

1 *information, that no treatment technology exists or such*
2 *technology is only available at a disproportionate cost. In*
3 *such instances the President shall select an interim*
4 *containment remedy for a "hot spot" subject to adequate*
5 *monitoring to ensure its continued integrity and shall*
6 *review the interim containment remedy within five years*
7 *to determine whether an appropriate treatment remedy for*
8 *the hot spot is available. For purposes of this paragraph,*
9 *the term "hot spot" means a discrete area within a facility*
10 *that contains hazardous substances that are highly toxic or*
11 *highly mobile, cannot be reliably contained, and present a*
12 *significant risk to human health or the environment should*
13 *exposure occur.*

14
15 **(4) GENERIC REMEDIES.** — *In order to streamline the*
16 *remedy selection process, and to facilitate rapid voluntary*
17 *action, the President shall establish, taking into account the*
18 *factors enumerated in subsection (b)(3)(A), cost-effective*
19 *generic remedies for categories of facilities, and expedited*
20 *procedures that include community involvement for selecting*
21 *generic remedies at an individual facility. To be eligible for*
22 *selection at a facility, a generic remedy shall be protective of*
23 *human health and the environment at that facility. When*
24 *appropriate, the President may select a generic remedy without*
25 *considering alternative remedies. [See SRA §503 at page 89]*

26
27 **(c) REVIEW.** — *If the President selects a remedial action that results in any*
28 *hazardous substances, pollutants, or contaminants remaining at the site, the*
29 *President shall review such remedial action, including public health*
30 *recommendations and decisions resulting from activities under*
31 *section 104(i), no less often than each 5 years after the [initiation]*
32 *completion of all physical on-site construction of such remedial action to*
33 *assure that human health and the environment are being protected by the remedial*
34 *action being implemented. In addition, if upon such review it is the judgment of*
35 *the President that action is appropriate at such site in accordance with section 104*
36 *or 106, the President shall take or require such action. The President shall report*
37 *to the Congress a list of facilities for which such review is required, the result of*
38 *all such reviews, and any actions taken as a result of such reviews. [See SRA*
39 *§116 at page 22]; [See SRA §504(a) at page 92]*

1 ~~[(d) DEGREE OF CLEANUP. —~~

2
3 ~~(1) Remedial actions selected under this section or otherwise~~
4 ~~required or agreed to by the President under this Act shall~~
5 ~~attain a degree of cleanup of hazardous substances, pollutants,~~
6 ~~and contaminants released into the environment and of control~~
7 ~~of further release at a minimum which assures protection of~~
8 ~~human health and the environment. Such remedial actions shall~~
9 ~~be relevant and appropriate under the circumstances presented~~
10 ~~by the release or threatened release of such substance, pollutant,~~
11 ~~or contaminant.~~

12
13 ~~(2) (A) With respect to any hazardous substance, pollutant or~~
14 ~~contaminant that will remain onsite, if —~~

15
16 ~~(i) any standard, requirement, criteria, or limitation~~
17 ~~under any Federal environmental law, including, but~~
18 ~~not limited to, the Toxic Substances Control Act, the~~
19 ~~Safe Drinking Water Act, the Clean Air Act, the~~
20 ~~Clean Water Act, the Marine Protection, Research~~
21 ~~and Sanctuaries Act, or the Solid Waste Disposal Act;~~
22 ~~or~~

23
24 ~~(ii) any promulgated standard, requirement, criteria,~~
25 ~~or limitation under a State environmental or facility~~
26 ~~siting law that is more stringent than any Federal~~
27 ~~standard, requirement, criteria, or limitation,~~
28 ~~including each such State standard, requirement,~~
29 ~~criteria, or limitation contained in a program~~
30 ~~approved, authorized or delegated by the~~
31 ~~Administrator under a statute cited in subparagraph~~
32 ~~(A), and that has been identified to the President by~~
33 ~~the State in a timely manner, is legally applicable to~~
34 ~~the hazardous substance or pollutant or contaminant~~
35 ~~concerned or is relevant and appropriate under the~~
36 ~~circumstances of the release or threatened release of~~
37 ~~such hazardous substance or pollutant or~~
38 ~~contaminant, the remedial action selected under~~
39 ~~section 104 or secured under section 106 shall~~
40 ~~require, at the completion of the remedial action, a~~
41 ~~level or standard of control for such hazardous~~
42 ~~substance or pollutant or contaminant which at least~~
43 ~~attains such legally applicable or relevant and~~

1 ~~appropriate standard, requirement, criteria, or~~
2 ~~limitation. Such remedial action shall require a level~~
3 ~~or standard of control which at least attains~~
4 ~~Maximum Contaminant Level Goals established under~~
5 ~~the Safe Drinking Water Act and water quality~~
6 ~~criteria established under section 304 or 303 of the~~
7 ~~Clean Water Act, where such goals or criteria are~~
8 ~~relevant and appropriate under the circumstances of~~
9 ~~the release or threatened release~~

10
11 ~~(B) (i) In determining whether or not any water quality~~
12 ~~criteria under the Clean Water Act is relevant and~~
13 ~~appropriate under the circumstances of the release or~~
14 ~~threatened release, the President shall consider the~~
15 ~~designated or potential use of the surface or~~
16 ~~groundwater, the environmental media affected, the~~
17 ~~purposes for which such criteria were developed, and~~
18 ~~the latest information available.~~

19
20 ~~(ii) For the purposes of this section, a process for~~
21 ~~establishing alternate concentration limits to those~~
22 ~~otherwise applicable for hazardous constituents in~~
23 ~~groundwater under subparagraph (A) may not be~~
24 ~~used to establish applicable standards under this~~
25 ~~paragraph if the process assumes a point of human~~
26 ~~exposure beyond the boundary of the facility, as~~
27 ~~defined at the conclusion of the remedial~~
28 ~~investigation and feasibility study, except where —~~

29
30 ~~(I) there are known and projected points of~~
31 ~~entry of such groundwater into surface water;~~
32 ~~and~~

33
34 ~~(II) on the basis of measurements or~~
35 ~~projections, there is or will be no statistically~~
36 ~~significant increase of such constituents from~~
37 ~~such groundwater in such surface water at the~~
38 ~~point of entry or at any point where there is~~
39 ~~reason to believe accumulation of constituents~~
40 ~~may occur downstream; and~~

41
42 ~~(III) the remedial action includes enforceable~~
43 ~~measures that will preclude human exposure to~~

~~the contaminated groundwater at any point
between the facility boundary and all known and
projected points of entry of such groundwater
into surface water~~

~~then the assumed point of human exposure may be at
such known and projected points of entry.~~

~~(C)(i) Clause (ii) of this subparagraph shall be applicable
only in cases where, due to the President's selection,
in compliance with subsection (b)(1), of a proposed
remedial action which does not permanently and
significantly reduce the volume, toxicity, or mobility
of hazardous substances, pollutants, or contaminants,
the proposed disposition of waste generated by or
associated with the remedial action selected by the
President is land disposal in a State referred to in
clause (ii).]~~

(d) DEGREE OF CLEANUP. —

(1) PROTECTION OF HUMAN HEALTH AND THE ENVIRONMENT. — A remedial action selected under this section or otherwise required or agreed to by the President under this Act shall be protective of human health and the environment. In order to provide consistent protection to all communities, the Administrator shall promulgate national goals to be applied at all facilities subject to remedial action under this Act.

(2) GENERIC CLEANUP LEVELS. — The Administrator shall promulgate, as appropriate, national generic cleanup levels for specific hazardous substances, pollutants, or contaminants, based on the national goals established in paragraph (1). A cleanup level shall —

(A) reflect reasonably anticipated future land uses,

(B) reflect other variables which can be easily measured at a facility and whose effects are scientifically well-understood to vary on a site-specific basis, and

1 (C) represent concentration levels below which a response
2 action is not required.

3
4 (3) **SITE-SPECIFIC METHODS TO ESTABLISH CLEANUP**
5 **LEVELS.** — Notwithstanding the promulgation of national
6 generic cleanup levels under subsection (d)(2) and nationally-
7 approved generic remedies under subsection (b)(4) of this
8 section, the Administrator may, as appropriate, rely on a site-
9 specific risk assessment to determine the proper level of cleanup
10 at a facility, based on the national goals established in
11 paragraph (1) and the reasonably anticipated future land uses at
12 the facility. This may occur if a national generic cleanup level
13 has not been developed or to account for particular
14 characteristics of a facility or its surroundings. In establishing
15 site-specific cleanup levels, the President shall consider the
16 views of the affected community in accordance with section 117
17 of this Act.

18
19 (4) **RISK ASSESSMENT.** — The Administrator shall promulgate
20 a national risk protocol for conducting risk assessments based
21 on realistic assumptions. After promulgation, risk assessments
22 underlying the degree of cleanup and remedy selection processes
23 shall use the national risk protocol.

24
25 (5) **FEDERAL AND STATE LAWS.** —

26
27 (A) A remedial action shall be required to comply with the
28 substantive requirements of —

29
30 (i) any standard, requirement, criterion, or
31 limitation under any federal environmental or
32 facility siting law that the President determines is
33 suitable for application to the remedial action at the
34 facility; and

35
36 (ii) any promulgated standard, requirement,
37 criterion, or limitation under any state environmental
38 law specifically addressing remedial action that is
39 adopted for the purpose of protecting human health
40 or the environment with the best available scientific
41 evidence through a public process where such a law
42 is more stringent than any such federal cleanup
43 standard, requirement, criterion, or limitation, or

1 *the cleanup level determined in accordance with the*
2 *requirements of this section.*

3
4 *(B) Procedural requirements of federal and state*
5 *standards, requirements, criteria, or limitations, including*
6 *but not limited to permitting requirements, shall not apply*
7 *to response actions conducted on-site. In addition,*
8 *compliance with such laws shall not be required with*
9 *respect to return, replacement, or redisposal of*
10 *contaminated media or residuals of contaminated media*
11 *into the same medium in or very near existing areas of*
12 *contamination on-site.*

13
14 *(C) The President may select a remedial action meeting the*
15 *requirements of paragraph (1) that does not attain a level*
16 *or standard of control at least equivalent to the federal or*
17 *State standards, requirements, criteria, or limitations as*
18 *required by paragraph (A), if the President finds that —*

19
20 *(i) the remedial action selected is only part of a total*
21 *remedial action that will attain such level or standard*
22 *of control when completed;*

23
24 *(ii) compliance with such requirement at that facility*
25 *will result in greater risk to human health and the*
26 *environment than alternative options;*

27
28 *(iii) compliance with such requirements is*
29 *technically impracticable from an engineering*
30 *perspective;*

31
32 *(iv) a generic remedy under section (b)(4) has been*
33 *selected for the facility;*

34
35 *(v) the remedial action selected will attain a*
36 *standard of performance that is equivalent to that*
37 *required under the standard, requirement, criterion,*
38 *or limitation identified under (A)(i) and (A)(ii)*
39 *through use of another approach;*

40
41 *(vi) with respect to a State standard, requirement,*
42 *criterion, or limitation, the State has not consistently*
43 *applied (or demonstrated the intention to consistently*

1 *apply) the standard, requirement, criterion, or*
2 *limitation in similar circumstances at other remedial*
3 *actions within the State; or*

4
5 *(vii) in the case of a remedial action to be*
6 *undertaken solely under section 104 using the Fund, a*
7 *selection of a remedial action that attains such level*
8 *or standard of control will not provide a balance*
9 *between the need for protection of public health and*
10 *welfare and the environment at the facility under*
11 *consideration, and the availability of amounts from*
12 *the Fund to respond to other facilities which present*
13 *or may present a threat to public health or welfare or*
14 *the environment, taking into consideration the*
15 *relative immediacy of such threat.*

16
17 *The President shall publish such findings, together with an*
18 *explanation and appropriate documentation. [See SRA §502 at*
19 *page 85]*

20
21 ~~[(ii)]~~ (6)(A) Except as provided in ~~[clauses (iii) and (iv)]~~
22 *subparagraph (B), a State standard, requirement, criteria, or*
23 *limitation (including any State siting standard or requirement) which*
24 *could effectively result in the statewide prohibition of land disposal*
25 *of hazardous substances, pollutants, or contaminants shall not apply.*
26 *[See SRA §504(b)(1) at page 92]; [See SRA §504(b)(3) at page 92]*

27
28 ~~[(iii)]~~ (B) Any State standard, requirement, criteria, or limitation
29 referred to in clause (ii) shall apply where each of the following
30 conditions is met: *[See SRA §504(b)(2) at page 92]*

31
32 (I) The State standard, requirement, criteria, or
33 limitation is of general applicability and was adopted by
34 formal means.

35
36 (II) The State standard, requirement, criteria, or
37 limitation was adopted on the basis of hydrologic,
38 geologic, or other relevant considerations and was not
39 adopted for the purpose of precluding onsite remedial
40 actions or other land disposal for reasons unrelated to
41 protection of human health and the environment.
42

(III) The State arranges for, and assures payment of the incremental costs of utilizing, a facility for disposition of the hazardous substances, pollutants, or contaminants concerned.

~~[(iv) Where the remedial action selected by the President does not conform to a State standard and the State has initiated a law suit against the Environmental Protection Agency prior to May 1, 1986, to seek to have the remedial action conform to such standard, the President shall conform the remedial action to the State standard. The State shall assure the availability of an offsite facility for such remedial action.] [See SRA §504(b)(4) at page 92]~~

~~[(3) In the case of any removal or remedial action involving the transfer of any hazardous substance or pollutant or contaminant offsite, such hazardous substance or pollutant or contaminant shall only be transferred to a facility which is operating in compliance with section 3004 and 3005 of the Solid Waste Disposal Act (or, where applicable, in compliance with the Toxic Substances Control Act or other applicable Federal law) and all applicable State requirements. Such substance or pollutant or contaminant may be transferred to a land disposal facility only if the President determines that both of the following requirements are met:~~

~~(A) The unit to which the hazardous substance or pollutant or contaminant is transferred is not releasing any hazardous waste, or constituent thereof, into the groundwater or surface water or soil.~~

~~(B) All such releases from other units at the facility are being controlled by a corrective action program approved by the Administrator under subtitle C of the Solid Waste Disposal Act.~~

~~The President shall notify the owner or operator of such facility of determinations under this paragraph.]~~

(7) In the case of any removal or remedial action involving the transfer of any hazardous substance or pollutant or contaminant off-site, such hazardous substance or pollutant or contaminant

1 *shall be transferred to a facility which is authorized under*
2 *applicable Federal and state law to receive such hazardous*
3 *substance or pollutant or contaminant and is in compliance with*
4 *such applicable Federal and state law. Such substance or*
5 *pollutant or contaminant may be transferred to a land disposal*
6 *facility permitted under Subtitle C of the Solid Waste Disposal*
7 *Act only if the President determines that both of the following*
8 *requirements are met —*
9

10 (A) *The unit to which the hazardous substance or pollutant*
11 *or contaminant is transferred is not releasing any*
12 *hazardous waste, or constituent thereof, into the*
13 *groundwater or surface water or soil.*
14

15 (B) *All such releases from other units at the facility are*
16 *being controlled by a corrective action program approved*
17 *by the Administrator under subtitle C of the Solid Waste*
18 *Disposal Act.*
19

20 *The President shall notify the owner or operator of such facility*
21 *of determinations made under this paragraph. [See SRA §504(b)(5)*
22 *at page 92]*
23

24 ~~[(4) The President may select a remedial action meeting the~~
25 ~~requirements of paragraph (1) that does not attain a level or~~
26 ~~standard of control at least equivalent to a legally applicable or~~
27 ~~relevant and appropriate standard, requirement, criteria, or~~
28 ~~limitation as required by paragraph (2) (including subparagraph~~
29 ~~(B) thereof), if the President finds that —~~
30

31 ~~(A) the remedial action selected is only part of a total~~
32 ~~remedial action that will attain such level or standard of~~
33 ~~control when completed;~~
34

35 ~~(B) compliance with such requirement at that facility will~~
36 ~~result in greater risk to human health and the environment~~
37 ~~than alternative options;~~
38

39 ~~(C) compliance with such requirements is technically~~
40 ~~impracticable from an engineering perspective;~~
41

42 ~~(D) the remedial action selected will attain a standard of~~
43 ~~performance that is equivalent to that required under the~~

~~otherwise applicable standard, requirement, criteria, or limitation, through use of another method or approach;~~

~~(E) with respect to a State standard, requirement, criteria, or limitation, the State has not consistently applied (or demonstrated the intention to consistently apply) the standard, requirement, criteria, or limitation in similar circumstances at other remedial actions within the State; or~~

~~(F) in the case of a remedial action to be undertaken solely under section 104 using the Fund, selection of a remedial action that attains such level or standard of control will not provide a balance between the need for protection of public health and welfare and the environment at the facility under consideration, and the availability of amounts from the Fund to respond to other sites which present or may present a threat to public health or welfare or the environment, taking into consideration the relative immediacy of such threats.~~

~~The President shall publish such findings, together with an explanation and appropriate documentation.] [See SRA §504(b)(6) at page 93]~~

(e) PERMITS AND ENFORCEMENT. —

(1) No Federal, State, or local permit *or permit application* shall be required for the portion of any removal or remedial action conducted entirely onsite, where such remedial action is selected and carried out in compliance with this section. *Furthermore, no Federal, State or local permit or permit application shall be required for on-site or off-site activities conducted under section 311(b).* [See SRA §504(c)(1) at page 93]

~~[(2) A State may enforce any Federal or State standard, requirement, criteria, or limitation to which the remedial action is required to conform under this Act in the United States district court for the district in which the facility is located. Any consent decree shall require the parties to attempt expeditiously to resolve disagreements concerning implementation of the remedial action informally with the appropriate Federal and State agencies. Where the parties~~

1 agree, the consent decree may provide for administrative
2 enforcement. Each consent decree shall also contain stipulated
3 penalties for violations of the decree in an amount not to exceed
4 \$25,000 per day, which may be enforced by either the President
5 or the State. Such stipulated penalties shall not be construed to
6 impair or affect the authority of the court to order compliance
7 with the specific terms of any such decree.]¹⁷ [See SRA §504(c)(2)
8 at page 92]

9
10 (f) STATE INVOLVEMENT. —

11
12 (1) [The President shall promulgate regulations providing for
13 substantial and meaningful involvement by each State in
14 initiation, development, and selection of remedial actions to be
15 undertaken in that State. The regulations, at a minimum, shall
16 include each of the following:

17
18 (A) State involvement in decisions whether to perform a
19 preliminary assessment and site inspection.

20
21 (B) Allocation of responsibility for hazard ranking system
22 scoring.

23
24 (C) State concurrence in deleting sites from the National
25 Priorities List.

26
27 (D) State participation in the long-term planning process
28 for all remedial sites within the State.

29
30 (E) A reasonable opportunity for States to review and
31 comment on each of the following:

32
33 (i) The remedial investigation and feasibility study
34 and all data and technical documents leading to its
35 issuance.

36
37 (ii) The planned remedial action identified in the
38 remedial investigation and feasibility study.

39
40 (iii) The engineering design following selection of
41 the final remedial action.

¹⁷Section 504(c)(2) of the Administration bill (page 92) removes paragraph (2) from CERCLA §121(e) — leaving that subsection with a paragraph (1) but no paragraph (2).

~~(iv) Other technical data and reports relating to implementation of the remedy.~~

~~(v) Any proposed finding or decision by the President to exercise the authority of subsection (d)(4).~~

~~(F) Notice to the State of negotiations with potentially responsible parties regarding the scope of any response action at a facility in the State and an opportunity to participate in such negotiations and, subject to paragraph (2), be a party to any settlement.~~

~~(G) Notice to the State and an opportunity to comment on the President's proposed plan for remedial action as well as on alternative plans under consideration. The President's proposed decision regarding the selection of remedial action shall be accompanied by a response to the comments submitted by the State, including an explanation regarding any decision under subsection (d)(4) on compliance with promulgated State standards. A copy of such response shall also be provided to the State.~~

~~(H) Prompt notice and explanation of each proposed action to the State in which the facility is located.~~

~~Prior to the promulgation of such regulations, the President shall provide notice to the State of negotiations with potentially responsible parties regarding the scope of any response action at a facility in the State, and such State may participate in such negotiations and, subject to paragraph (2), any settlements.]~~

(f) (1) The President may repeal, no earlier than one year after the promulgation of final regulations under sections 127(a)(3) and 127(b)(3), the regulations issued under this paragraph prior to the date of enactment of the Superfund Reform Act of 1994. [See SRA §201(b)(3) at page 32]

(2) (A) This paragraph shall apply to remedial actions secured under section 106. At least 30 days prior to the entering of any consent decree, if the President proposes to select a remedial action that does not attain a [legally applicable or relevant and appropriate]

1 standard, requirement, criteria, or limitation, under the authority of
2 ~~[subsection (d)(4)]~~ *subsection (d)(5)(C)*, the President shall
3 provide an opportunity for the State to concur or not concur in such
4 selection. If the State concurs, the State may become a signatory to
5 the consent decree. [See SRA §201(b)(4) at page 32]
6

7 (B) If the State does not concur in such selection, and the State
8 desires to have the remedial action conform to such standard,
9 requirement, criteria, or limitation, the State shall intervene in the
10 action under section 106 before entry of the consent decree, to seek
11 to have the remedial action so conform. Such intervention shall be a
12 matter of right. The remedial action shall conform to such standard
13 requirement, criteria, or limitation if the State establishes, on the
14 administrative record, that the finding of the President was not
15 supported by substantial evidence. If the court determines that the
16 remedial action shall conform to such standard, requirement,
17 criteria, or limitation, the remedial action shall be so modified and
18 the State may become a signatory to the decree. If the court
19 determines that the remedial action need not conform to such
20 standard, requirement, criteria, or limitation, and the State pays or
21 assures the payment of the additional costs attributable to meeting
22 such standard, requirement, criteria, or limitation, the remedial
23 action shall be so modified and the State shall become a signatory to
24 the decree.
25

26 (C) The President may conclude settlement negotiations with
27 potentially responsible parties without State concurrence.
28

- 29 (3) (A) This paragraph shall apply to remedial actions at facilities owned
30 or operated by a department, agency, or instrumentality of the
31 United States. At least 30 days prior to the publication of the
32 President's final remedial action plan, if the President proposes to
33 select a remedial action that does not attain a ~~[legally applicable~~
34 ~~or relevant and appropriate]~~ standard, requirement, criteria, or
35 limitation, under the authority of ~~[subsection (d)(4)]~~ *subsection*
36 *(d)(5)(C)*, the President shall provide an opportunity for the State
37 to concur or not concur in such selection. If the State concurs, or
38 does not act within 30 days, the remedial action may proceed. [See
39 SRA §201(b)(5) at page 32]
40

41 (B) If the State does not concur in such selection as provided in
42 subparagraph (A), and desires to have the remedial action conform

1 to such standard, requirement, criteria, or limitation, the State may
2 maintain an action as follows:

3
4 (i) If the President has notified the State of selection of such a
5 remedial action, the State may bring an action within 30 days
6 of such notification for the sole purpose of determining
7 whether the finding of the President is supported by substantial
8 evidence. Such action shall be brought in the United States
9 district court for the district in which the facility is located.

10
11 (ii) If the State establishes, on the administrative record, that
12 the President's finding is not supported by substantial
13 evidence, the remedial action shall be modified to conform to
14 such standard, requirement, criteria, or limitation.

15
16 (iii) If the State fails to establish that the President's finding
17 was not supported by substantial evidence and if the State pays,
18 within 60 days of judgment, the additional costs attributable to
19 meeting such standard, requirement, criteria, or limitation, the
20 remedial action shall be selected to meet such standard,
21 requirement, criteria, or limitation. If the State fails to pay
22 within 60 days, the remedial action selected by the President
23 shall proceed through completion.

24
25 (C) Nothing in this section precludes, and the court shall not enjoin,
26 the Federal agency from taking any remedial action unrelated to or
27 not inconsistent with such standard, requirement, criteria, or
28 limitation.

29
30 ***(4) A State may enforce only those Federal or State legally***
31 ***applicable standards, requirements, criterion, or limitations to***
32 ***which the Administrator has determined the remedial action is***
33 ***required to conform under this Act. Where the parties agree,***
34 ***the consent decree may provide for administrative enforcement.***
35 ***Each consent decree shall also contain stipulated penalties for***
36 ***violations of the decree in an amount not to exceed \$25,000 per***
37 ***day. Such stipulated penalties shall not be construed to impair***
38 ***or affect the authority of the court to order compliance with the***
39 ***specific terms of any such decree. [See SRA §504(d) at page 93]***

SETTLEMENTS

SEC. 122 (a) AUTHORITY TO ENTER INTO AGREEMENTS. — The President, in his discretion, may enter into an agreement with any person (including the owner or operator of the facility from which a release or substantial threat of release emanates, or any other potentially responsible person), to perform any response action (including any action described in section 104(b)) if the President determines that such action will be done properly by such person. Whenever practicable and in the public interest, as determined by the President, the President shall act to facilitate agreements under this section that are in the public interest and consistent with the National Contingency Plan in order to expedite effective remedial actions and minimize litigation. If the President decides not to use the procedures in this section, the President shall notify in writing potentially responsible parties at the facility of such decision and the reasons why use of the procedures is inappropriate. A decision of the President to use or not to use the procedures in this section is not subject to judicial review.

(b) AGREEMENTS WITH POTENTIALLY RESPONSIBLE PARTIES.

(1) MIXED FUNDING. — An agreement under this section may provide that the President will reimburse the parties to the agreement from the Fund, with interest, for certain costs of actions under the agreement that the parties have agreed to perform but which the President has agreed to finance. In any case in which the President provides such reimbursement, the President shall make all reasonable efforts to recover the amount of such reimbursement under section 107 or under other relevant authorities.

(2) REVIEWABILITY. — The President's decisions regarding the availability of fund financing under this subsection shall not be subject to judicial review under subsection (d).

(3) RETENTION OF FUNDS. — If, as part of any agreement, the President will be carrying out any action and the parties will be paying amounts to the President, the President may, notwithstanding any other provision of law, retain and use such amounts for purposes of carrying out the agreement.

(4) FUTURE OBLIGATION OF FUND. — In the case of a completed remedial action pursuant to an agreement described in paragraph (1), the Fund shall be subject to an obligation for subsequent remedial actions at the same facility but only to the extent that such subsequent actions are necessary by reason of the failure of the original remedial action. Such

obligation shall be in a proportion equal to, but not exceeding, the proportion contributed by the Fund for the original remedial action. The Fund's obligation for such future remedial action may be met through Fund expenditures or through payment, following settlement or enforcement action, by parties who were not signatories to the original agreement.

(c) EFFECT OF AGREEMENT. —

(1) LIABILITY. — Whenever the President has entered into an agreement under this section, the liability to the United States under this Act of each party to the agreement, including any future liability to the United States, arising from the release or threatened release that is the subject of the agreement shall be limited as provided in the agreement pursuant to a covenant not to sue in accordance with subsection (f). A covenant not to sue may provide that future liability to the United States of a settling potentially responsible party under the agreement may be limited to the same proportion as that established in the original settlement agreement. Nothing in this section shall limit or otherwise affect the authority of any court to review in the consent decree process under subsection (d) any covenant not to sue contained in an agreement under this section. In determining the extent to which the liability of parties to an agreement shall be limited pursuant to a covenant not to sue, the President shall be guided by the principle that a more complete covenant not to sue shall be provided for a more permanent remedy undertaken by such parties.

(2) ACTIONS AGAINST OTHER PERSONS. — If an agreement has been entered into under this section, the President may take any action under section 106 against any person who is not a party to the agreement, once the period for submitting a proposal under subsection (e)(2)(B) has expired. Nothing in this section shall be construed to affect either of the following:

(A) The liability of any person under section 106 or 107 with respect to any costs or damages which are not included in the agreement.

(B) The authority of the President to maintain an action under this Act against any person who is not a party to the agreement.

1 (d) ENFORCEMENT. —

2
3 (1) CLEANUP AGREEMENTS. —

4
5 (A) CONSENT DECREE. — Whenever the President enters into an
6 agreement under this section with any potentially responsible party
7 with respect to remedial action under section 106 following approval
8 of the agreement by the Attorney General, except as otherwise
9 provided in the case of certain administrative settlements referred to
10 in subsection (g), the agreement shall be entered in the appropriate
11 United States district court as a consent decree. The President need
12 not make any finding regarding an imminent and substantial
13 endangerment to the public health or the environment in connection
14 with any such agreement or consent decree.
15

16 (B) EFFECT. — The entry of any consent decree under this
17 subsection shall not be construed to be an acknowledgment by the
18 parties that the release or threatened release concerned constitutes an
19 imminent and substantial endangerment to the public health or
20 welfare or the environment. Except as otherwise provided in the
21 Federal Rules of Evidence, the participation by any party in the
22 process under this section shall not be considered an admission of
23 liability for any purpose, and the fact of such participation shall not
24 be admissible in any judicial or administrative proceeding, including
25 a subsequent proceeding under this section.
26

27 (C) STRUCTURE. — The President may fashion a consent decree so
28 that the entering of such decree and compliance with such decree or
29 with any determination or agreement made pursuant to this section
30 shall not be considered an admission of liability for any purpose.
31

32 (2) PUBLIC PARTICIPATION. —

33
34 (A) FILING OF PROPOSED JUDGMENT. — At least 30 days
35 before a final judgment is entered under paragraph (1), the proposed
36 judgment shall be filed with the court.
37

38 (B) OPPORTUNITY FOR COMMENT. — The Attorney General
39 shall provide an opportunity to persons who are not named as parties
40 to the action to comment on the proposed judgment before its entry
41 by the court as a final judgment. The Attorney General shall
42 consider, and file with the court, any written comments, views, or
43 allegations relating to the proposed judgment. The Attorney General

1 may withdraw or withhold its consent to the proposed judgment if
2 the comments, views, and allegations concerning the judgment
3 disclose facts or considerations which indicate that the proposed
4 judgment is inappropriate, improper, or inadequate.
5

6 (3) 104(b) AGREEMENTS. — Whenever the President enters into an
7 agreement under this section with any potentially responsible party with
8 respect to action under section 104(b), the President shall issue an order or
9 enter into a decree setting forth the obligations of such party. The United
10 States district court for the district in which the release or threatened
11 release occurs may enforce such order or decree.
12

13 (e) SPECIAL NOTICE PROCEDURES. —
14

15 (1) NOTICE. — Whenever the President determines that a period of
16 negotiation under this subsection would facilitate an agreement with
17 potentially responsible parties for taking response action (including any
18 action described in section 104(b)) and would expedite remedial action, the
19 President shall so notify all such parties and shall provide them with
20 information concerning each of the following:
21

22 (A) The names and addresses of potentially responsible parties
23 (including owners and operators and other persons referred to in
24 section 107(a)), to the extent such information is available.
25

26 (B) To the extent such information is available, the volume and
27 nature of substances contributed by each potentially responsible party
28 identified at the facility.
29

30 (C) A ranking by volume of the substances at the facility, to the
31 extent such information is available.
32

33 The President shall make the information referred to in this paragraph
34 available in advance of notice under this paragraph upon the request of a
35 potentially responsible party in accordance with procedures provided by
36 the President. The provisions of subsection (e) of section 104 regarding
37 protection of confidential information apply to information provided under
38 this paragraph. Disclosure of information generated by the President
39 under this section to persons other than the Congress, or any duly
40 authorized Committee thereof, is subject to other privileges or protections
41 provided by law, including (but not limited to) those applicable to attorney
42 work product. Nothing contained in this paragraph or in other provisions
43 of this Act shall be construed, interpreted, or applied to diminish the

1 required disclosure of information under other provisions of this or other
2 Federal or State laws.

3
4 (2) NEGOTIATION. —

5
6 (A) MORATORIUM. — Except as provided in this subsection, the
7 President may not commence action under section 104(a) or take any
8 action under section 106 for 120 days after providing notice and
9 information under this subsection with respect to such action.
10 Except as provided in this subsection, the President may not
11 commence a remedial investigation and feasibility study under
12 section 104(b) for 90 days after providing notice and information
13 under this subsection with respect to such action. The President may
14 commence any additional studies or investigations authorized under
15 section 104(b) including remedial design, during the negotiation
16 period.

17
18 (B) PROPOSALS. — Persons receiving notice and information
19 under paragraph (1) of this subsection with respect to action under
20 section 106 shall have 60 days from the date of receipt of such notice
21 to make a proposal to the President for undertaking or financing the
22 action under section 106. Persons receiving notice and information
23 under paragraph (1) of this subsection with respect to action under
24 section 104(b) shall have 60 days from the date of receipt of such
25 notice to make a proposal to the President for undertaking or
26 financing the action under section 104(b).

27
28 (C) ADDITIONAL PARTIES. — If an additional potentially
29 responsible party is identified during the negotiation period or after
30 an agreement has been entered into under this subsection concerning
31 a release or threatened release, the President may bring the
32 additional party into the negotiation or enter into a separate
33 agreement with such party.

34
35 ~~[(3) PRELIMINARY ALLOCATION OF RESPONSIBILITY. —~~

36
37 ~~(A) IN GENERAL. — The President shall develop~~
38 ~~guidelines for preparing nonbinding preliminary~~
39 ~~allocations of responsibility. In developing these~~
40 ~~guidelines the President may include such factors as the~~
41 ~~President considers relevant, such as: volume, toxicity,~~
42 ~~mobility, strength of evidence, ability to pay, litigative~~
43 ~~risks, public interest considerations, precedential value,~~

1 ~~and inequities and aggravating factors. When it would~~
2 ~~expedite settlements under this section and remedial~~
3 ~~action, the President may, after completion of the remedial~~
4 ~~investigation and feasibility study, provide a nonbinding~~
5 ~~preliminary allocation of responsibility which allocates~~
6 ~~percentages of the total cost of response among potentially~~
7 ~~responsible parties at the facility.~~

8
9 ~~(B) COLLECTION OF INFORMATION. — To collect~~
10 ~~information necessary or appropriate for performing the~~
11 ~~allocation under subparagraph (A) or for otherwise~~
12 ~~implementing this section, the President may by subpoena~~
13 ~~require the attendance and testimony of witnesses and the~~
14 ~~production of reports, papers, documents, answers to~~
15 ~~questions, and other information that the President deems~~
16 ~~necessary. Witnesses shall be paid the same fees and~~
17 ~~mileage that are paid witnesses in the courts of the United~~
18 ~~States. In the event of contumacy or failure or refusal of~~
19 ~~any person to obey any such subpoena, any district court~~
20 ~~of the United States in which venue is proper shall have~~
21 ~~jurisdiction to order any such person to comply with such~~
22 ~~subpoena. Any failure to obey such an order of the court~~
23 ~~is punishable by the court as a contempt thereof.~~

24
25 ~~(C) EFFECT. — The nonbinding preliminary allocation of~~
26 ~~responsibility shall not be admissible as evidence in any~~
27 ~~proceeding, and no court shall have jurisdiction to review~~
28 ~~the nonbinding preliminary allocation of responsibility.~~
29 ~~The nonbinding preliminary allocation of responsibility~~
30 ~~shall not constitute an apportionment or other statement on~~
31 ~~the divisibility of harm or causation.~~

32
33 ~~(D) COSTS. — The costs incurred by the President in~~
34 ~~producing the nonbinding preliminary allocation of~~
35 ~~responsibility shall be reimbursed by the potentially~~
36 ~~responsible parties whose offer is accepted by the~~
37 ~~President. Where an offer under this section is not~~
38 ~~accepted, such costs shall be considered costs of response.~~

39
40 ~~(E) DECISION TO REJECT OFFER. — Where the~~
41 ~~President, in his discretion, has provided a nonbinding~~
42 ~~preliminary allocation of responsibility and the potentially~~
43 ~~responsible parties have made a substantial offer providing~~

~~for response to the President which he rejects, the reasons for the rejection shall be provided in a written explanation. The President's decision to reject such an offer shall not be subject to judicial review.] [See SRA §408(a) at page 62]~~

~~[(4)] (3) FAILURE TO PROPOSE. — If the President determines that a good faith proposal for undertaking or financing action under section 106 has not been submitted within 60 days of the provision of notice pursuant to this subsection, the President may thereafter commence action under section 104(a) or take an action against any person under section 106 of this Act. If the President determines that a good faith proposal for undertaking or financing action under section 104(b) has not been submitted within 60 days after the provision of notice pursuant to this subsection, the President may thereafter commence action under section 104(b). [See SRA §408(b) at page 62]~~

~~[(5)] (4) SIGNIFICANT THREATS. — Nothing in this subsection shall limit the President's authority to undertake response or enforcement action regarding a significant threat to public health or the environment within the negotiation period established by this subsection. [See SRA §408(b) at page 62]~~

~~[(6) INCONSISTENT RESPONSE ACTION. — When either the President, or a potentially responsible party pursuant to an administrative order or consent decree under this Act, has initiated a remedial investigation and feasibility study for a particular facility under this Act, no potentially responsible party may undertake any remedial action at the facility unless such remedial action has been authorized by the President.]¹⁸ [See SRA §408(b) at page 62]~~

(f) COVENANT NOT TO SUE. —

~~[(1) DISCRETIONARY COVENANTS. — The President may, in his discretion, provide any person with a covenant not to sue concerning any liability to the United States under this Act, including future liability, resulting from a release or threatened release of a hazardous substance addressed by a remedial action, whether that action is onsite or offsite, if each of the following conditions is met:~~

¹⁸Section 408(c) of the Administration bill (page 62) states that CERCLA §122(e)(6) should be moved and redesignated as a new §122(o).

~~(A) The covenant not to sue is in the public interest.~~

~~(B) The covenant not to sue would expedite response action consistent with the National Contingency Plan under section 105 of this Act.~~

~~(C) The person is in full compliance with a consent decree under section 106 (including a consent decree entered into in accordance with this section) for response to the release or threatened release concerned.~~

~~(D) The response action has been approved by the President.] [See SRA §408(e) at page 63]~~

(I) FINAL COVENANTS. —The President shall offer potentially responsible parties who enter into settlement agreements otherwise acceptable to the United States a final covenant not to sue concerning any liability to the United States under this Act, including a covenant with respect to future liability, for response actions or response costs, provided that —

(A) The settling party agrees to perform, or there are other adequate assurances of the performance of, a final remedial action for the release or threat of release that is the subject of the settlement;

(B) The settlement agreement has been reached prior to the commencement of litigation against the settling party under section 106 or 107 of this Act with respect to this facility;

(C) The settling party waives all contribution rights against other potentially responsible parties at the facility; and

(D) The settling party pays premium that compensates for the risks of remedy failure; future liability resulting from unknown conditions; unanticipated increases in the cost of any uncompleted response action, unless the settling party is performing the response action; and the United States' litigation risk with respect to persons who have not resolved their liability to the United States under this Act,

1 *unless all parties have settled their liability to the United*
2 *States, or the settlement covers 100 percent of the United*
3 *States' response costs. The President shall have sole*
4 *discretion to determine the appropriate amount of any such*
5 *premium, and such determinations are committed to the*
6 *President's discretion. The President has discretion to*
7 *waive or reduce the premium payment for persons who*
8 *demonstrate an inability to pay such a premium.*

9
10 **(2) DISCRETIONARY COVENANTS.** — *For all other*
11 *settlements under this title, the President may, in his discretion,*
12 *provide any person with a covenant not to sue concerning any*
13 *liability to the United States under this title, if the covenant not*
14 *to sue is in the public interest. The President may include any*
15 *conditions in such covenant not to sue, including but not limited*
16 *to the additional condition referred to in paragraph (5) of this*
17 *subsection. In determining whether such conditions or*
18 *covenants are in the public interest, the President shall consider*
19 *the effectiveness and reliability of the response action, the*
20 *nature of the risks remaining at the facility, the strength of*
21 *evidence, the likelihood of cost recovery, the reliability of any*
22 *response action or actions to restore, replace or acquire the*
23 *equivalent of injured natural resources, and any other factors*
24 *relevant to the protection of human health, welfare, and the*
25 *environment.* [See SRA §408(e) at page 63]

26
27 **[(-2)] (3) SPECIAL COVENANTS NOT TO SUE.** — *In the case of any*
28 *person to whom the President is authorized under paragraph (1) of this*
29 *subsection to provide a covenant not to sue, for the portion of [remedial]*
30 *response action —* [See SRA §408(h) at page 65]; [See SRA §408(f) at
31 page 65]

32
33 *(A) which involves the transport and secure disposition offsite of*
34 *hazardous substances in a facility meeting the requirements of*
35 *sections 3004(c), (d), (e), (f), (g), (m), (o), (p), (u), and (v) and*
36 *3005(c) of the Solid Waste Disposal Act, where the President has*
37 *rejected a proposed [remedial] response action that is consistent*
38 *with the National Contingency Plan that does not include such offsite*
39 *disposition and has thereafter required offsite disposition; or* [See
40 SRA §408(f) at page 65]

41
42 *(B) which involves the treatment of hazardous substances so as to*
43 *destroy, eliminate, or permanently immobilize the hazardous*

1 constituents of such substances, such that, in the judgment of the
2 President, the substances no longer present any current or currently
3 foreseeable future significant risk to public health, welfare or the
4 environment, no byproduct of the treatment or destruction process
5 presents any significant hazard to public health, welfare or the
6 environment, and all byproducts are themselves treated, destroyed,
7 or contained in a manner which assures that such byproducts do not
8 present any current or currently foreseeable future significant risk to
9 public health, welfare or the environment, the President shall
10 provide such person with a covenant not to sue with respect to future
11 liability to the United States under this Act for a future release or
12 threatened release of hazardous substances from such facility, and a
13 person provided such covenant not to sue shall not be liable to the
14 United States under section 106 or 107 with respect to such release
15 or threatened release at a future time.

16
17 ~~[(3) REQUIREMENT THAT REMEDIAL ACTION BE~~
18 ~~COMPLETED. — A covenant not to sue concerning future~~
19 ~~liability to the United States shall not take effect until the~~
20 ~~President certifies that remedial action has been completed in~~
21 ~~accordance with the requirements of this Act at the facility that~~
22 ~~is the subject of such covenant.~~

23
24 ~~(4) FACTORS. — In assessing the appropriateness of a covenant~~
25 ~~not to sue under paragraph (1) and any condition to be included~~
26 ~~in a covenant not to sue under paragraph (1) or (2), the~~
27 ~~President shall consider whether the covenant or condition is in~~
28 ~~the public interest on the basis of such factors as the following:~~

29
30 ~~(A) The effectiveness and reliability of the remedy, in~~
31 ~~light of the other alternative remedies considered for the~~
32 ~~facility concerned.~~

33
34 ~~(B) The nature of the risks remaining at the facility.~~

35
36 ~~(C) The extent to which performance standards are~~
37 ~~included in the order or decree.~~

38
39 ~~(D) The extent to which the response action provides a~~
40 ~~complete remedy for the facility, including a reduction in~~
41 ~~the hazardous nature of the substances at the facility.~~
42

(E) ~~The extent to which the technology used in the response action is demonstrated to be effective.~~

(F) ~~Whether the Fund or other sources of funding would be available for any additional remedial actions that might eventually be necessary at the facility.~~

(G) ~~Whether the remedial action will be carried out, in whole or in significant part, by the responsible parties themselves.] [See SRA §408(g) at page 65]~~

~~[(5)]~~ (4) SATISFACTORY PERFORMANCE. — Any covenant not to sue under this subsection shall be subject to the satisfactory performance by such party of its obligations under the agreement concerned. [See SRA §408(h) at page 65]

~~[(6)]~~ (5) ADDITIONAL CONDITION FOR FUTURE LIABILITY. — [See SRA §408(h) at page 65]

(A) Except for the portion of the ~~[remedial]~~ *response* action which is subject to a covenant not to sue under ~~[paragraph (2)]~~ *paragraph (1) or (3)* or under subsection (g) (relating to ~~[de minimis settlements]~~ *de minimis and other expedited settlements pursuant to subsection (g) of this section*), a covenant not to sue a person concerning future liability to the United States shall include an exception to the covenant that allows the President to sue such person concerning future liability resulting from the release or threatened release that is the subject of the covenant where such liability arises out of conditions which are unknown at the time ~~[the President certifies under paragraph (3) that remedial action has been completed at the facility concerned]~~ *that the response action that is the subject of the settlement agreement is selected.* [See SRA §408(i)(1) at page 65]; [See SRA §408(i)(2) at page 65]; [See SRA §408(i)(3) at page 65]; [See SRA §408(i)(4) at page 65]

(B) ~~[In extraordinary circumstances, the]~~ *The* President may determine, after assessment of relevant factors such as ~~[those referred to in paragraph (4) and]~~ volume, toxicity, mobility, strength of evidence, ability to pay, litigative risks, public interest considerations, precedential value, and inequities and aggravating factors, not to include the exception referred to in subparagraph (A) *if the agreement containing the covenant not to sue provides for payment of a premium to address possible*

1 *remedy failure or any releases that may result from*
2 *unknown conditions and other terms, conditions, or*
3 *requirements of the agreement containing the covenant not to sue are*
4 *sufficient to provide all reasonable assurances that public health and*
5 *the environment will be protected from any future releases at or*
6 *from the facility. The President may, in his discretion, waive*
7 *or reduce the premium payment for persons who*
8 *demonstrate an inability to pay such a premium. [See SRA*
9 *§408(j)(1) at page 65]; [See SRA §408(j)(2) at page 65]; [See SRA*
10 *§408(j)(3) at page 65]; [See SRA §408(j)(4) at page 66]*

11
12 (C) The President is authorized to include any provisions allowing
13 future enforcement action under section 106 or 107 that in the
14 discretion of the President are necessary and appropriate to assure
15 protection of public health, welfare, and the environment.

16
17 ~~[(g) DE MINIMIS SETTLEMENTS. —~~

18
19 ~~(1) EXPEDITED FINAL SETTLEMENT. — Whenever~~
20 ~~practicable and in the public interest, as determined by the~~
21 ~~President, the President shall as promptly as possible reach a~~
22 ~~final settlement with a potentially responsible party in an~~
23 ~~administrative or civil action under section 106 or 107 if such~~
24 ~~settlement involves only a minor portion of the response costs at~~
25 ~~the facility concerned and, in the judgment of the President, the~~
26 ~~conditions in either of the following subparagraph (A) or (B)~~
27 ~~are met:~~

28
29 ~~(A) Both of the following are minimal in comparison to~~
30 ~~other hazardous substances at the facility:~~

31
32 ~~(i) The amount of the hazardous substances~~
33 ~~contributed by that party to the facility.~~

34
35 ~~(ii) The toxic or other hazardous effects of the~~
36 ~~substances contributed by that party to the facility.]~~
37 ~~[See SRA §408(k) at page 66]~~

38
39 ~~(g) EXPEDITED FINAL SETTLEMENT. —~~

40
41 ~~(1) PARTIES ELIGIBLE FOR EXPEDITED SETTLEMENT. —~~
42 ~~Wherever practicable and in the public interest, and as provided~~
43 ~~in section 122a of this title, the President will as promptly as~~

possible offer to reach a final administrative or judicial settlement with potentially responsible parties who, in the judgment of the President, meet one or more of the following conditions for eligibility for an expedited settlement:

(A) the potentially responsible party's individual contribution of hazardous substances at the facility is de minimis. The contribution of hazardous substance to a facility by a potentially responsible party is de minimis if:

(i) the potentially responsible party's volumetric contribution of materials containing hazardous substances is minimal in comparison to the total volumetric contributions at the facility; such individual contribution is presumed to be minimal if it is one percent or less of the total volumetric contribution at the facility, unless the Administrator identifies a different threshold based on site-specific factors; and

(ii) the potentially responsible party's hazardous substances do not present toxic or other hazardous effects that are significantly greater than those of other hazardous substances at the facility; or [See SRA §408(k) at page 66]

(B) The potentially responsible party —

(i) is the owner of the real property on or in which the facility is located;

(ii) did not conduct or permit the generation, transportation, storage, treatment, or disposal of any hazardous substance at the facility; and

(iii) did not contribute to the release or threat of release of a hazardous substance at the facility through any action or omission.

This subparagraph (B) does not apply if the potentially responsible party purchased the real property with actual or constructive knowledge that the property was used for the generation,

1 transportation, storage, treatment, or disposal of any hazardous
2 substance.

3
4 *(C) The potentially responsible party's liability is based*
5 *solely on subsection 107(a)(3) or 107(a)(4) of this title,*
6 *and the arrangement for disposal, treatment, or transport*
7 *for disposal or treatment, or the acceptance for transport*
8 *for disposal or treatment, involved only municipal solid*
9 *waste (MSW) or sewage sludge as defined in section*
10 *101(41) or 101(44), respectively, of this Act. The*
11 *Administrator may offer to settle the liability of*
12 *generators and transporters of MSW or sewage sludge*
13 *whose liability is limited pursuant to section 107(a)(5)(A)*
14 *of this title for up to 10 percent of the total response costs*
15 *at the facility; or*

16
17 *(D) The potentially responsible party is a small business or*
18 *a municipality and has demonstrated to the United States a*
19 *limited ability to pay response costs. For purposes of this*
20 *provision —*

21
22 *(i) In the case of a small business, the President shall*
23 *consider, to the extent that information is provided*
24 *by the small business, the business' ability to pay for*
25 *its total allocated share, and demonstrable constraints*
26 *on its ability to raise revenues.*

27
28 *(ii) In the case of a municipal owner or operator, the*
29 *President shall consider, to the extent that*
30 *information is provided by the municipality, the*
31 *following factors:*

32
33 *(1) the municipality's general obligation bond*
34 *rating and information about the most recent*
35 *bond issue for which the rating was prepared;*

36
37 *(2) the amount of total available funds (other*
38 *than dedicated funds);*

39
40 *(3) the amount of total operating revenues*
41 *(other than obligated or encumbered revenues);*

42
43 *(4) the amount of total expenses;*

1 (5) *the amounts of total debt and debt service;*

2
3 (6) *per capita income; and*

4
5 (7) *real property values.*

6
7 *A municipality may also submit for consideration by*
8 *the President an evaluation of the potential impact of*
9 *the settlement on essential services that the*
10 *municipality must provide, and the feasibility of*
11 *making delayed payments or payments over time. If*
12 *a municipality asserts that it has additional*
13 *environmental obligations besides its potential*
14 *liability under this Act, then the municipality may*
15 *create a list of the obligations, including an estimate*
16 *of the costs of complying with such obligations. A*
17 *municipality may establish an inability to pay*
18 *through an affirmative showing that such payment of*
19 *its liability under this Act would either*

20
21 (I) *create a substantial demonstrable risk that*
22 *the municipality would default on existing debt*
23 *obligations, be forced into bankruptcy, be*
24 *forced to dissolve, or be forced to make*
25 *budgetary cutbacks that would substantially*
26 *reduce current levels of protection of public*
27 *health and safety, or*

28
29 (II) *necessitate a violation of legal*
30 *requirements or limitations of general*
31 *applicability concerning the assumption and*
32 *maintenance of fiscal municipal obligations. [See*
33 *SRA §408(I) at page 67]*

34
35 ~~[(2) COVENANT NOT TO SUE. — The President may~~
36 ~~provide a covenant not to sue with respect to the facility~~
37 ~~concerned to any party who has entered into a settlement~~
38 ~~under this subsection unless such a covenant would be~~
39 ~~inconsistent with the public interest as determined under~~
40 ~~subsection (f).~~

41
42 ~~(3) EXPEDITED AGREEMENT. — The President shall~~
43 ~~reach any such settlement or grant any such covenant not~~

~~to sue as soon as possible after the President has available the information necessary to reach such a settlement or grant such a covenant.] [See SRA §408(m) at page 69]~~

(2) The determination of whether a party is eligible for an expedited settlement shall be made on the basis of information available to the President at the time the settlement is negotiated. Such determination, and the settlement, are committed to the President's unreviewable discretion. If the President determines not to apply these provisions for expedited settlements at a facility, the basis for that determination must be explained in writing.

(3) ADDITIONAL FACTORS RELEVANT TO MUNICIPALITIES. — In any settlement with a municipality pursuant to this title, the President may take additional equitable factors into account in determining an appropriate settlement amount, including, without limitation, the limited resources available to that party, and any in-kind services that the party may provide to support the response action at the facility. In considering the value of in-kind services, the President shall consider the fair market value of those services. [See SRA §408(m) at page 69]

(4) CONSENT DECREE OR ADMINISTRATIVE ORDER. — A settlement under this subsection shall be entered as a consent decree or embodied in an administrative order setting forth the terms of the settlement. In the case of any facility where the total response costs exceed ~~[\$500,000]~~ \$2,000,000 (excluding interest), if the settlement is embodied as an administrative order, the order may be issued only with the prior written approval of the Attorney General. If the Attorney General or his designee has not approved or disapproved the order within 30 days of this referral, the order shall be deemed to be approved unless the Attorney General and the Administrator have agreed to extend the time. The district court for the district in which the release or threatened release occurs may enforce any such administrative order. [See SRA §408(n) at page 70]

~~[(5) EFFECT OF AGREEMENT. — A party who has resolved its liability to the United States under this subsection shall not be liable for claims for contribution~~

1 ~~regarding matters addressed in the settlement. Such~~
2 ~~settlement does not discharge any of the other potentially~~
3 ~~responsible parties unless its terms so provide, but it~~
4 ~~reduces the potential liability of the others by the amount~~
5 ~~of the settlement.] [See SRA §408(o) at page 70]~~
6

7 [(6)] (5) SETTLEMENTS WITH OTHER POTENTIALLY
8 RESPONSIBLE PARTIES. — Nothing in this subsection shall be
9 construed to affect the authority of the President to reach settlements
10 with other potentially responsible parties under this Act. [See SRA
11 §408(o) at page 70]
12

13 (h) ~~[COST RECOVERY SETTLEMENT AUTHORITY]~~ **AUTHORITY**
14 **TO SETTLE CLAIMS FOR PENALTIES, PUNITIVE DAMAGES**

1 **AND COST RECOVERY.**¹⁹ — [See SRA §408(p)(1) at page 70]; [See SRA
2 §408(p)(2) at page 70]

3
4 (1) **AUTHORITY TO SETTLE.** — The head of any department or agency
5 with authority to undertake a response action under this Act pursuant to the
6 national contingency plan may consider, compromise, and settle a claim
7 under section 107 for *past and future* costs incurred *or that may be*
8 *incurred* by the United States Government if the claim has not been
9 referred to the Department of Justice for further action. *The head of*
10 *any department or agency with the authority to seek, or to*
11 *request the Attorney General to seek, civil or punitive damages*
12 *under this Act may settle claims for any such penalties or*
13 *damages which may be otherwise assessed in civil administrative*
14 *or judicial proceedings.* In the case of any facility where the total
15 response costs exceed ~~[\$500,000]~~ \$2,000,000 (excluding interest), any
16 claim referred to in the preceding sentence may be compromised and
17 settled only with the prior written approval of the Attorney General. [See
18 SRA §408(q)(1) at page 70]; [See SRA §408(q)(2) at page 70]; [See SRA
19 §408(q)(3) at page 70]

20
21 (2) **USE OF ARBITRATION.** — Arbitration in accordance with
22 regulations promulgated under this subsection may be used as a method of
23 settling claims of the United States where the total response costs for the
24 facility concerned do not exceed \$500,000 (excluding interest). After
25 consultation with the Attorney General, the department or agency head
26 may establish and publish regulations for the use of arbitration or
27 settlement under this subsection.

¹⁹Section 408(p)(2) of the Administration bill (page 70) says to delete "settlement authority" from CERCLA §122(b). However, those words only appear in the title of this provision, which was already deleted and reworded by §408(p)(1) of the Administration bill.

1 (3) RECOVERY OF CLAIMS. — If any person fails to pay a claim that
2 has been settled under this subsection, the department or agency head shall
3 request the Attorney General to bring a civil action in an appropriate
4 district court to recover the amount of such claim, plus costs, attorneys'
5 fees, and interest from the date of the settlement. In such an action, the
6 terms of the settlement shall not be subject to review.

7
8 ~~[(4) CLAIMS FOR CONTRIBUTION. — A person who has~~
9 ~~resolved its liability to the United States under this subsection~~
10 ~~shall not be liable for claims for contribution regarding matters~~
11 ~~addressed in the settlement. Such settlement shall not discharge~~
12 ~~any of the other potentially liable persons unless its terms so~~
13 ~~provide, but it reduces the potential liability of the others by~~
14 ~~the amount of the settlement.] [See SRA §408(r) at page 70]~~
15

16 (i) SETTLEMENT PROCEDURES. —

17
18 (1) PUBLICATION IN FEDERAL REGISTER. — At least 30 days before
19 any settlement (including any settlement arrived at through arbitration)
20 may become final under subsection (h), or under subsection (g) in the case
21 of a settlement embodied in an administrative order, the head of the
22 department or agency which has jurisdiction over the proposed settlement
23 shall publish in the Federal Register notice of the proposed settlement. The
24 notice shall identify the facility concerned and the parties to the proposed
25 settlement.

26
27 (2) COMMENT PERIOD. — For a 30-day period beginning on the date of
28 publication of notice under paragraph (1) of a proposed settlement, the
29 head of the department or agency which has jurisdiction over the proposed
30 settlement shall provide an opportunity for persons who are not parties to
31 the proposed settlement to file written comments relating to the proposed
32 settlement.

33
34 (3) CONSIDERATION OF COMMENTS. — The head of the department
35 or agency shall consider any comments filed under paragraph (2) in
36 determining whether or not to consent to the proposed settlement and may
37 withdraw or withhold consent to the proposed settlement if such comments
38 disclose facts or considerations which indicate the proposed settlement is
39 inappropriate, improper, or inadequate.
40

1 (j) NATURAL RESOURCES. —

2
3 (1) NOTIFICATION OF TRUSTEE. — Where a release or threatened
4 release of any hazardous substance that is the subject of negotiations under
5 this section may have resulted in damages to natural resources under the
6 trusteeship of the United States, the President shall notify the Federal
7 natural resource trustee of the negotiations and shall encourage the
8 participation of such trustee in the negotiations.
9

10 (2) COVENANT NOT TO SUE. — An agreement under this section may
11 contain a covenant not to sue under section 107(a)(4)(C) for damages to
12 natural resources under the trusteeship of the United States resulting from
13 the release or threatened release of hazardous substances that is the subject
14 of the agreement, but only if the Federal natural resource trustee has
15 agreed in writing to such covenant. The Federal natural resource trustee
16 may agree to such covenant if the potentially responsible party agrees to
17 undertake appropriate actions necessary to protect and restore the natural
18 resources damaged by such release or threatened release of hazardous
19 substances.
20

21 (k) SECTION NOT APPLICABLE TO VESSELS. — The provisions of this
22 section shall not apply to releases from a vessel.
23

24 (l) CIVIL PENALTIES. — A potentially responsible party which is a party to an
25 administrative order or consent decree entered pursuant to an agreement under
26 this section or section 120 (relating to Federal facilities) or which is a party to an
27 agreement under section 120 and which fails or refuses to comply with any term
28 or condition of the order, decree or agreement shall be subject to a civil penalty
29 in accordance with section 109.
30

31 (m) APPLICABILITY OF GENERAL PRINCIPLES OF LAW. — In the case of
32 consent decrees and other settlements under this section (including covenants not
33 to sue), no provision of this Act shall be construed to preclude or otherwise affect
34 the applicability of general principles of law regarding the setting aside or
35 modification of consent decrees or other settlements.
36

37 (n) NOTIFICATION OF ATSDR. — *When the Agency for Toxic*
38 *Substances and Disease Registry (ATSDR) has conducted health*
39 *related response activities pursuant to section 104(i) in response to a*
40 *release or threatened release of any hazardous substance that is the*
41 *subject of negotiations under this section, the President shall notify*
42 *ATSDR of the negotiations and shall encourage the participation of*
43 *ATSDR in the negotiations. [See SRA §117 at page 22]*

1 (o) **INCONSISTENT RESPONSE ACTION.** — When either the
2 President, or a potentially responsible party pursuant to an
3 administrative order or consent decree under this Act, has initiated a
4 ~~[remedial investigation and feasibility study]~~ response action for a
5 particular facility under this Act, no potentially responsible party
6 may undertake any ~~[remedial action]~~ response action at the facility
7 unless such ~~[remedial action]~~ response action has been authorized by
8 the President.²⁰ [See SRA §408(c) at page 62]; [See SRA §408(c)(1) at
9 page 62]; [See SRA §408(c)(2) at page 62]
10

11 (p) **RETENTION OF FUNDS.** — If, as part of any agreement under
12 this Chapter, the President will be carrying out any action and the
13 parties will be paying amounts to the President, the President may
14 retain such amounts in interest bearing accounts, and use such
15 amounts, together with accrued interest, for purposes of carrying out
16 the agreement.
17

18 (q) Notwithstanding the limitations on review in section 113(h), and
19 except as provided in subsection (g) of this section, a person whose
20 claim for response costs or contribution is limited as a result of
21 contribution protection afforded by an administrative settlement
22 under this section may challenge the cost recovery component of such
23 settlement only by filing a complaint against the Administrator in the
24 United States District Court within 60 days after such settlement
25 becomes final. Venue shall lie in the district in which the
26 appropriate Regional Administrator has her principal office. Any
27 review of an administrative settlement shall be limited to the
28 administrative record, and the settlement shall be upheld unless the
29 objecting party can demonstrate on that record that the decision of
30 the President to enter into the administrative settlement was
31 arbitrary, capricious, or otherwise not in accordance with law. [See
32 SRA §408(d) at page 62]²¹
33

²⁰Section 408(c) of the Administration bill (page 62) says to make two changes to the redesignated section 122(n) of CERCLA. However, the language referred to is actually in subsection (o) and that is how it appears in this strike-out version.

²¹See footnote 18, *supra*.

ALLOCATION AT MULTI-PARTY FACILITIES

SEC. 122a(a) SCOPE. —

(1) Except as provided in paragraph (3) of this section, for each non-federally owned facility listed on the National Priorities List involving two or more potentially responsible parties, the Administrator shall:

(A) initiate the allocation process established under this section for any remedial action selected by the President after the date of enactment of the Superfund Reform Act of 1994, and

(B) initiate the allocation process established in subsections (c)(2) through (d)(3) of this section for any remedial action selected by the President prior to the date of enactment of the Superfund Reform Act of 1994, when requested by any potentially responsible party who has resolved its liability to the United States with respect to the remedial action or is performing the remedial action pursuant to an order issued under section 106(a) of this title, to assist in allocating shares among potentially responsible parties. The allocation performed pursuant to this subsection shall not be construed to require:

(i) payment of an orphan share pursuant to subsection (e) of this section; or

(ii) the conferral of reimbursement rights pursuant to subsection (h) of this section.

(2) Except as provided in paragraph (3) of this section, the Administrator may initiate the allocation process established under this section with respect to any other facility involving two (2) or more potentially responsible parties, as the Administrator deems appropriate.

(3) The allocation process established under this section shall not apply to any facility where —

(i) there has been a final settlement, decree or order that determines all liability or allocated shares of all

1 *potentially responsible parties with respect to the*
2 *facility; or*

3
4 *(ii) where response action is being carried out by a*
5 *State pursuant to referral or authorization under*
6 *section 104(k) of this title.*

7
8 *(4) Nothing in this section limits or affects —*

9
10 *(A) the Administrator's obligation to perform an*
11 *allocation for facilities that have been the subject of*
12 *partial or expedited settlements;*

13
14 *(B) the ability of a potentially responsible party at a*
15 *facility to resolve its liability to the United States or other*
16 *parties at any time before initiation or completion of the*
17 *allocation process; or*

18
19 *(C) the validity, enforceability, finality or merits of any*
20 *judicial or administrative order, judgment or decree*
21 *issued, signed, lodged, or entered with respect to liability*
22 *under this Act, or authorizes modification of any such*
23 *order, judgment or decree.*

24
25 *(b) MORATORIUM ON COMMENCEMENT OR CONTINUATION*
26 *OF SUITS. —*

27
28 *(1) No person may commence an action pursuant to section 107*
29 *of this Act regarding a response action for which an allocation*
30 *must be performed under subsection (a)(1)(A) of this section,*
31 *or for which the Administrator has initiated an allocation under*
32 *subsection (a)(1)(B) or (a)(2) of this section, until 60 days after*
33 *issuance of the allocator's report under subsection (d)(1) of this*
34 *section.*

35
36 *(2) If an action under section 107 of this Act regarding a*
37 *response for which an allocation is to be performed under this*
38 *section is pending (A) upon date of enactment of the Superfund*
39 *Reform Act of 1994, or (B) upon initiation of an allocation*
40 *under subsection (a)(1)(B) or (a)(2) of this section, the action*
41 *shall be stayed until 60 days after the issuance of an allocator's*
42 *report, unless the court determines that a stay will not result in*
43 *a just and expeditious resolution of the action.*

1 (3) Any applicable limitations period with respect to actions
2 subject to paragraph (1) shall be tolled from the earlier of —

3
4 (A) the date of listing of the facility on the National
5 Priorities list; or

6
7 (B) the commencement of the allocation process pursuant
8 to this section, until 120 days after the allocation report
9 required by this section has been provided to the parties to
10 the allocation.

11
12 (4) Nothing in this section shall in any way limit or affect the
13 President's authority to exercise the powers conferred by
14 sections 103, 104, 105, 106, or 122 of this title, or to
15 commence an action where there is a contemporaneous filing of
16 a judicial consent decree resolving a party's liability; or to file
17 a proof of claim or take other action in a proceeding under title
18 11 of the U.S. Code.

19
20 (5) The procedures established in this section are intended to
21 guide the exercise of settlement authority by the United States,
22 and shall not be construed to diminish or affect the principles of
23 retroactive, strict, joint and several liability under this title.

24
25 (c) COMMENCEMENT OF ALLOCATION. —

26
27 (1) RESPONSIBLE PARTY SEARCH. — At all facilities subject
28 to this section, the Administrator shall, as soon as practicable
29 but not later than 60 days after the earlier of the commencement
30 of the remedial investigation or the listing of the facility on the
31 National Priorities List, initiate a search for potentially
32 responsible parties, using its authorities under section 104 of
33 this title.

34
35 (2) NOTICE TO PARTIES. — As soon as practicable after
36 receipt of sufficient information, but not more than eighteen
37 (18) months after commencement of the remedial investigation,
38 the Administrator shall:

39
40 (A) notify those potentially responsible parties who will be
41 assigned shares in the allocation process and notify the
42 public, in accordance with section 117(d) of this title, of
43 the list of potentially responsible parties preliminarily

1 identified by the Administrator to be assigned shares in the
2 allocation process; and

3
4 (B) provide the notified potentially responsible parties
5 with a list of neutral parties who are not employees of the
6 United States and who the Administrator determines, in his
7 or her sole discretion, are qualified to perform an
8 allocation at the facility.

9
10 (3) **SELECTION OF ALLOCATOR.** — The Administrator shall
11 thereafter:

12
13 (A) acknowledge the parties' selection of an allocator from
14 the list, or select an allocator from the list provided to the
15 parties if the parties cannot agree on a selection within 30
16 days of the notice;

17
18 (B) contract with the selected allocator for the provision
19 of allocation services; and

20
21 (C) make available all responses to information requests,
22 as well as other relevant information concerning the
23 facility and potentially responsible parties, to the parties
24 and to the allocator within 30 days of the appointment of
25 the allocator. The Administrator shall not make available
26 any privileged or confidential information, except as
27 otherwise authorized by law.

28
29 (4) **PROPOSED ADDITION OF PARTIES.** —

30
31 (A) For 60 days after information has been made available
32 pursuant to paragraph 3(C), the parties identified by the
33 Administrator and members of the affected community
34 shall have the opportunity to identify and propose
35 additional potentially responsible parties or otherwise
36 provide information relevant to the facility or such
37 potentially responsible parties. This period may be
38 extended by the Administrator for an additional 30 days
39 upon request of a party.

40
41 (B) Within 30 days after the end of the period specified in
42 paragraph (A) for identification of additional parties, the
43 Administrator shall issue a final list of parties subject to

1 *the allocation process, hereinafter the allocation parties.*
2 *The Administrator shall include in the list of allocation*
3 *parties those parties identified pursuant to paragraph (A)*
4 *in the allocation process unless the Administrator*
5 *determines and explains in writing that there is not a*
6 *sufficient basis in law or fact to take enforcement action*
7 *with respect to those parties under this title, or that they*
8 *have entered into an expedited settlement under section*
9 *122(g). The Administrator's determination is to be based*
10 *on the information available at the time of the*
11 *determination and is committed to the Administrator's*
12 *unreviewable discretion.*

13
14 **(5) ROLE OF FEDERAL AGENCIES. —** *Federal departments,*
15 *agencies or instrumentalities that are identified as potentially*
16 *responsible parties shall be subject to, and be entitled to the*
17 *benefits of, the allocation process provided by this section to*
18 *the same extent as any other party.*

19
20 **(6) REPRESENTATION OF THE UNITED STATES. —** *The*
21 *Administrator and the Attorney General shall be entitled to*
22 *review all documents and participate in any phase of the*
23 *allocation proceeding.*

24
25 **(d) ALLOCATION DETERMINATION. —**

26
27 **(1) SETTLEMENT AND ALLOCATION REPORT. —**
28 *Following issuance of the list of allocation parties, the allocator*
29 *may convene the allocation parties for the purpose of*
30 *facilitating agreement concerning their shares. If the allocation*
31 *parties do not agree to a negotiated allocation of shares, the*
32 *allocator shall prepare a written report, with a nonbinding,*
33 *equitable allocation of percentage shares for the facility, and*
34 *provide such report to the allocation parties and the*
35 *Administrator.*

36
37 **(2) INFORMATION REQUESTS. —** *To assist in the allocation*
38 *of shares, the allocator may request information from the*
39 *allocation parties, and may make additional requests for*
40 *information at the request of any allocation party. The*
41 *allocator may request the Administrator to exercise any*
42 *information-gathering authority under this title where necessary*
43 *to assist in determining the allocation of shares.*

1 **(3) FACTORS IN THE ALLOCATION.** — *Unless the allocation*
2 *parties agree to a negotiated allocation, the allocator shall*
3 *prepare a nonbinding, equitable allocation of percentage shares*
4 *for the facility based on the following factors:*

5
6 **(A)** *the amount of hazardous substances contributed by*
7 *each allocation party;*

8
9 **(B)** *the degree of toxicity of hazardous substances*
10 *contributed by each allocation party;*

11
12 **(C)** *the mobility of hazardous substances contributed by*
13 *each allocation party;*

14
15 **(D)** *the degree of involvement of each allocation party in*
16 *the generation, transportation, treatment, storage, or*
17 *disposal of the hazardous substance;*

18
19 **(E)** *the degree of care exercised by each allocation party*
20 *with respect to the hazardous substance, taking into*
21 *account the characteristics of the hazardous substance;*

22
23 **(F)** *the cooperation of each allocation party in*
24 *contributing to the response action and in providing*
25 *complete and timely information during the allocation*
26 *process; and*

27
28 **(G)** *such other factors that the Administrator determines*
29 *are appropriate by published regulation or guidance,*
30 *including guidance with respect to the identification of*
31 *orphan shares pursuant to paragraph (3) of this subsection.*

32
33 **(4) IDENTIFICATION OF ORPHAN SHARES.** — *The allocator*
34 *may determine that a percentage share for the facility is*
35 *specifically attributable to an orphan share. The orphan share*
36 *may only consist of the following:*

37
38 **(A)** *shares attributable to hazardous substances that the*
39 *allocator determines, on the basis of information*
40 *presented, to be specifically attributable to identified but*
41 *insolvent or defunct responsible parties who are not*
42 *affiliated with any allocation party;*
43

(B) the difference between the aggregate shares that the allocator determines, on the basis of the information presented, are specifically attributable to contributors of municipal solid waste subject to the limitations in section 107(a)(5)(D) of this title, and the share actually assumed by those parties in any settlements with the United States pursuant to subsection 122(g) of this title, including the fair market value of in-kind services provided by a municipality; and

(C) the difference between the aggregate share that the allocator determines, on the basis of information presented, is specifically attributable to parties with a limited ability to pay response costs and the share actually assumed by those parties in any settlements with the United States pursuant to subsection 122(g) of this title.

The orphan share shall not include shares attributable to hazardous substances that the allocator cannot attribute to any identified party. Such shares shall be distributed among the allocation parties.

(e) **FUNDING OF ORPHAN SHARES.** — From funds available in the Fund in any given fiscal year, and without further appropriation action, the President shall make reimbursements from the Fund, to eligible parties for costs incurred and equitably attributable to orphan shares determined pursuant to this section, provided that Fund financing of orphan shares shall not exceed \$300 million in any fiscal year. Reimbursements made under this subsection shall be subject to such terms and conditions as the President may prescribe.

(f) **TIMING.** — The allocator shall provide the report required by subsection (d)(1) of this section to the allocation parties and the Administrator within 180 days of the issuance of the list of parties pursuant to subsection (c)(4)(B) of this section. Upon request, for good cause shown, the Administrator may grant the allocator additional time to complete the allocation, not to exceed 90 days.

(g) **SETTLEMENT FOLLOWING ALLOCATION.** —

(1) **Obligations of the United States.** — The President will accept a timely offer of settlement from a party based on the share determined by the allocator, if it includes appropriate

1 *premia and other terms and conditions of settlement, unless the*
2 *Administrator, with the concurrence of the Attorney General of*
3 *the United States, determines that a settlement based on the*
4 *allocator's determinations would not be fair, reasonable, and in*
5 *the public interest. The Administrator and the Attorney*
6 *General shall seek to make any such determination within 60*
7 *days from the date of issuance of the allocator's report. The*
8 *determinations of the Administrator and the Attorney General*
9 *shall not be judicially reviewable.*

10
11 *(2) If the Administrator and the Attorney General determine not*
12 *to settle on the basis of the allocation, they shall provide the*
13 *allocation parties and members of the affected community with*
14 *a written explanation of the Administrator's determination. If*
15 *the Administrator and the Attorney General make such a*
16 *determination, the parties who are willing to settle on the basis*
17 *of the allocation are entitled to a consultation with an official*
18 *appointed by the President, to present any objections to the*
19 *determination, within 60 days after the determination.*

20
21 *(3) Settlements based on allocated shares shall include:*

22
23 *(A) a waiver of contribution rights against all parties who*
24 *are potentially responsible parties for the response action;*

25
26 *(B) covenants not to sue, consistent with the provisions of*
27 *section 122(f) of this title, and provisions regarding*
28 *performance or adequate assurance of performance of*
29 *response actions addressed in the settlement;*

30
31 *(C) a premium that compensates for the United States'*
32 *litigation risk with respect to potentially responsible*
33 *parties who have not resolved their liability to the United*
34 *States, except that no such premium shall apply if all*
35 *parties settle or the settlement covers one 100% of*
36 *response costs;*

37
38 *(D) contribution protection, consistent with sections 113(f)*
39 *and 122(g) of this title, regarding matters addressed in the*
40 *settlement. Such settlement does not discharge any of the*
41 *other potentially responsible parties unless its terms so*
42 *provide, but it reduces the potential liability of the others*
43 *by the amount of the settlement; and*

(E) provisions through which the settling parties shall receive reimbursement from the Fund for any response costs incurred by such parties in excess of the aggregate of their allocated share and any premia required by the settlement. Such right to reimbursement shall not be contingent on the United States' recovery of response costs from any responsible person not a party to any settlement with the United States.

(4) The President shall report annually to Congress on the administration of the allocation scheme, and provide information comparing allocation results with actual settlements at multiparty facilities.

(5) The provisions of this section shall not apply to any offer of settlement made after commencement of litigation by the United States against the offering party under section 107 of this title.

(h) **AUTHORIZATION OF REIMBURSEMENT.** — In any settlement in which a party agrees to perform response work in excess of its share, the Administrator shall have authority in entering the settlement to confer a right of reimbursement on the settling party pursuant to such procedures as the Administrator may prescribe.

(i) **POST-SETTLEMENT LITIGATION.** —

(1) **GENERAL.** — The United States may commence an action under section 107 against any person who has not resolved its liability to the United States following allocation, on or after 60 days following issuance of the allocator's report. In any such action, the potentially responsible parties shall be liable for all unrecovered response costs, including any federally-funded orphan share identified in accordance with subsection (d)(4). Defendants in any such action may implead any allocation party who did not resolve its liability to the United States. The Administrator and the Attorney General shall issue guidelines to ensure that the relief sought against *de minimis* parties under principles of joint and several liability will not be grossly disproportionate to their contribution to the facility. The application of such guidelines is committed to the discretion of the Administrator and the Attorney General.

1 (2) *In commencing any action under section 107 following*
2 *allocation, the Attorney General must certify, in the complaint,*
3 *that the United States has been unable to reach a settlement that*
4 *would be in the best interests of the United States.*

5
6 (3) **ADMISSIBILITY OF ALLOCATOR'S REPORT.** — *The*
7 *allocator's report shall not be admissible in any court with*
8 *respect to a claim brought by or against the United States,*
9 *except in its capacity as a nonsettling potentially responsible*
10 *party, or for the determination of liability. The allocator's*
11 *report, subject to the rules and discretion of the court, may be*
12 *admissible solely for the purpose of assisting the court in*
13 *making an equitable allocation of response costs among the*
14 *relative shares of nonsettling liable parties.*

15
16 (4) **OTHER AUTHORITIES UNAFFECTED.** — *Nothing in this*
17 *section limits or in any way affects the exercise of the*
18 *President's authority pursuant to sections 103, 104, 105, or 106.*

19
20 (5) **Costs.** —

21
22 (A) *The costs of implementing the allocation procedure*
23 *set forth in this section, including reasonable fees and*
24 *expenses of the allocator, shall be considered necessary*
25 *costs of response.*

26
27 (B) *The costs attributable to any funding of orphan shares*
28 *identified by the allocator pursuant to subsection (d)(4)*
29 *also shall be considered necessary costs of response, and*
30 *shall be recoverable from liable parties who do not resolve*
31 *their liability on the basis of the allocation.*

32
33 (6) **REJECTION OF SHARE DETERMINATION.** — *In any*
34 *action by the United States under this title, if the United States*
35 *has rejected an offer of settlement that is consistent with*
36 *subsections (g)(1) and (g)(3) of this section and was presented*
37 *to the United States prior to the commencement of the action,*
38 *the offeror shall be entitled to recover from the United States*
39 *the offeror's reasonable costs of defending the action after the*
40 *making of the offer, including reasonable attorneys' fees, if the*
41 *ultimate resolution of liability or allocation of costs with*
42 *respect to the offeror, taking into account all settlements and*
43 *reimbursements with respect to the facility other than those*

1 *attributable to insurance or indemnification, is as or more*
2 *favorable to the offeror than the offer based on the allocation.*

3
4 **(j) PROCEDURES.** — *The Administrator shall further define the*
5 *procedures of this section by regulation or guidance, after*
6 *consultation with the Attorney General. [See SRA §409 at page 71]*
7

REIMBURSEMENT TO LOCAL GOVERNMENTS

SEC. 123 (a) APPLICATION. — Any general purpose unit of local government for a political subdivision which is affected by a release or threatened release at any facility may apply to the President for reimbursement under this section.

(b) REIMBURSEMENT. —

(1) TEMPORARY EMERGENCY MEASURES. — The President is authorized to reimburse local community authorities for expenses incurred (before or after the enactment of the Superfund Amendments and Reauthorization Act of 1986) in carrying out temporary emergency measures necessary to prevent or mitigate injury to human health or the environment associated with the release or threatened release of any hazardous substance or pollutant or contaminant. Such measures may include, where appropriate, security fencing to limit access, response to fires and explosions, and other measures which require immediate response at the local level.

(2) LOCAL FUNDS NOT SUPPLANTED. — Reimbursement under this section shall not supplant local funds normally provided for response.

(c) AMOUNT. — The amount of any reimbursement to any local authority under subsection (b)(1) may not exceed \$25,000 for a single response. The reimbursement under this section with respect to a single facility shall be limited to the units of local government having jurisdiction over the political subdivision in which the facility is located.

(d) PROCEDURE. — Reimbursements authorized pursuant to this section shall be in accordance with rules promulgated by the Administrator within one year after the enactment of the Superfund Amendments and Reauthorization Act of 1986.

METHANE RECOVERY

SEC. 124 (a) IN GENERAL. — In the case of a facility at which equipment for the recovery or processing (including recirculation of condensate) of methane has been installed, for purposes of this Act:

(1) The owner or operator of such equipment shall not be considered an "owner or operator", as defined in section 101(20), with respect to such facility.

(2) The owner or operator of such equipment shall not be considered to have arranged for disposal or treatment of any hazardous substance at such facility pursuant to section 107 of this Act.

(3) The owner or operator of such equipment shall not be subject to any action under section 106 with respect to such facility.

(b) EXCEPTIONS. — Subsection (a) does not apply with respect to a release or threatened release of a hazardous substance from a facility described in subsection (a) if either of the following circumstances exist:

(1) The release or threatened release was primarily caused by activities of the owner or operator of the equipment described in subsection (a).

(2) The owner or operator of such equipment would be covered by paragraph (1), (2), (3), or (4) of subsection (a) of section 107 with respect to such release or threatened release if he were not the owner or operator of such equipment. In the case of any release or threatened release referred to in paragraph (1), the owner or operator of the equipment described in subsection (a) shall be liable under this Act only for costs or damages primarily caused by the activities of such owner or operator.

SECTION 3001(b)(3)(a)(i) WASTE

SEC. 125. (a) REVISION OF HAZARD RANKING SYSTEM. — This section shall apply only to facilities which are not included or proposed for inclusion on the National Priorities List and which contain substantial volumes of waste described in section 3001(b)(3)(A)(i) of the Solid Waste Disposal Act. As expeditiously as practicable, the President shall revise the hazard ranking system in effect under the National Contingency Plan with respect to such facilities in a manner which assures appropriate consideration of each of the following site-specific characteristics of such facilities:

(1) The quantity, toxicity, and concentrations of hazardous constituents which are present in such waste and a comparison thereof with other wastes.

(2) The extent of, and potential for, release of such hazardous constituents into the environment.

(3) The degree of risk to human health and the environment posed by such constituents.

(b) INCLUSION PROHIBITED. — Until the hazard ranking system is revised as required by this section, the President may not include on the National Priorities List any facility which contains substantial volumes of waste described in section 3001(b)(3)(A)(i) of the Solid Waste Disposal Act on the basis of an evaluation made principally on the volume of such waste and not on the concentrations of the hazardous constituents of such waste. Nothing in this section shall be construed to affect the President's authority to include any such facility on the National Priorities List based on the presence of other substances at such facility or to exercise any other authority of this Act with respect to such other substances.

INDIAN TRIBES

SEC. 126. (a) TREATMENT GENERALLY. — The governing body of an Indian tribe shall be afforded substantially the same treatment as a State with respect to the provisions of section 103(a) (regarding notification of releases), section 104(c)(2) (regarding consultation on remedial actions), section 104(e) (regarding access to information), section 104(i) (regarding health authorities), *section 127 (regarding State authority), section 120 (regarding voluntary response actions)*, and section 105 (regarding roles and responsibilities under the national contingency plan and submittal of priorities for remedial action, but not including the provision regarding the inclusion of at least one facility per State on the National Priorities List). [See SRA §606 at page 107]

(b) COMMUNITY RELOCATION. — Should the President determine that proper remedial action is the permanent relocation of tribal members away from a contaminated site because it is cost effective and necessary to protect their health and welfare, such finding must be concurred in by the affected tribal government before relocation shall occur. The President, in cooperation with the Secretary of the Interior, shall also assure that all benefits of the relocation program are provided to the affected tribe and that alternative land of equivalent value is available and satisfactory to the tribe. Any lands acquired for relocation of tribal members shall be held in trust by the United States for the benefit of the tribe.

(c) STUDY. — The President shall conduct a survey, in consultation with the Indian tribes, to determine the extent of hazardous waste sites on Indian lands. Such survey shall be included within a report which shall make recommendations on the program needs of tribes under this Act, with particular emphasis on how tribal participation in the administration of such programs can be maximized. Such report shall be submitted to Congress along with the President's budget request for fiscal year 1988.

(d) LIMITATION. — Notwithstanding any other provision of this Act, no action under this Act by an Indian tribe shall be barred until the later of the following:

(1) The applicable period of limitations has expired.

(2) 2 years after the United States, in its capacity as trustee for the tribe, gives written notice to the governing body of the tribe that it will not present a claim or commence an action on behalf of the tribe or fails to present a claim or commence an action within the time limitations specified in this Act.

STATE AUTHORITY

SEC. 127. (a) STATE PROGRAM AUTHORIZATION. —

(1) *IN GENERAL.* — At any time after the promulgation of the criteria required by paragraph (3) of this subsection, a State may apply to the Administrator to carry out, under its own legal authorities, response actions and enforcement activities at all facilities listed or proposed for listing on the National Priorities List, or certain categories of facilities listed or proposed for listing on the National Priorities List, within the State. This section shall not apply to any facility owned or operated by a department, agency, or instrumentality of the United States listed on the National Priorities List if, on the date of enactment of the Superfund Reform Act of 1994, an interagency agreement for such facility has been entered into pursuant to section 120(a)(2).

(2) *REQUIREMENTS FOR AUTHORIZATION.* — If the Administrator determines that the State possesses the legal authority, technical capability, and resources necessary to conduct response actions and enforcement activities in a manner that is substantially consistent with this Act and the National Contingency Plan at the facilities listed or proposed for listing on the National Priorities List for which it seeks authorization, the Administrator, pursuant to a contract or agreement entered into between the Administrator and the State, may authorize the State to assume the responsibilities established under this Act at all such facilities or categories of facilities. Except as otherwise provided in this Act, such responsibilities include, but are not limited to, responding to a release or threatened release of a hazardous substance or pollutant or contaminant; selecting response actions; expending the Fund in amounts authorized by the Administrator to finance response activities; and taking enforcement actions, including cost recovery actions to recover Fund expenditures made by the State. In an application for authorization, a State shall acknowledge its responsibility to address all response actions at the facilities for which it seeks authorization.

(3) *PROMULGATION OF REGULATIONS.* — The Administrator shall issue regulations to determine a State's eligibility for authorization and establish a process and criteria

1 *for withdrawal of such an authorization. At a minimum, a State*
2 *must demonstrate —*

3
4 *(A) that it has a process for allocating liability among*
5 *potentially responsible parties that is substantially*
6 *consistent with section 122a of this Act (as added by the*
7 *Superfund Reform Act of 1994);*

8
9 *(B) that it provides for public participation in a manner*
10 *that is substantially consistent with section 117 of this Act*
11 *and the National Contingency Plan;*

12
13 *(C) that it provides for selection and conduct of response*
14 *actions in a manner that is substantially consistent with*
15 *section 121 of this Act; and*

16
17 *(D) that it provides for notification of and coordination*
18 *with trustees in a manner that is substantially consistent*
19 *with section 104(b)(2) and section 122(j)(1) of this Act.*

20
21 **(b) REFERRAL OF RESPONSIBILITIES. —**

22
23 *(1) IN GENERAL. — At any time after the promulgation of*
24 *the criteria required by paragraph (3) of this subsection, a State*
25 *may apply to the Administrator to carry out, under its own*
26 *legal authorities, response actions at a specific facility or*
27 *facilities listed or proposed for listing on the National*
28 *Priorities List, within the State.*

29
30 *(2) REQUIREMENTS FOR REFERRAL. — If the*
31 *Administrator determines that the State possesses the legal*
32 *authority, technical capability, and resources necessary to*
33 *conduct response actions and enforcement activities in a manner*
34 *substantially consistent with this Act and the National*
35 *Contingency Plan at the facilities listed or proposed for listing*
36 *on the National Priorities List facilities for which it seeks*
37 *referral, the Administrator, pursuant to a contract or agreement*
38 *entered into between the Administrator and the State, may refer*
39 *the responsibilities established under this Act to the State for*
40 *the facilities for which the State seeks referral. Except as*
41 *otherwise provided in this Act, such responsibilities include, but*
42 *are not limited to, responding to a release or threatened release*
43 *of a hazardous substance or pollutant or contaminant; selecting*

1 *response actions; expending the Fund in amounts authorized by*
2 *the Administrator to finance response activities; and taking*
3 *enforcement actions, including cost recovery actions to recover*
4 *Fund expenditures made by the State.*

5
6 **(3) PROMULGATION OF REGULATIONS.** — *The*
7 *Administrator shall promulgate regulations to determine a*
8 *State's eligibility for referral and establish a process and*
9 *criteria for withdrawal of such referral. At a minimum, a State*
10 *must demonstrate that it meets the requirements described in*
11 *subsection (a)(3).*

12
13 **(c) AUTHORIZED USE OF FUND.** — *At facilities listed on the*
14 *National Priorities List for which a State is authorized under*
15 *subsection (a), and at facilities listed on the National Priorities List*
16 *which are referred to a State under subsection (b), the State shall be*
17 *eligible for response action financing from the Fund. The*
18 *Administrator shall ensure that all allocations of the Fund to the*
19 *States for the purpose of undertaking site-specific response actions*
20 *are based primarily on the relative risks to human health and the*
21 *environment posed by the facilities eligible for funding. The amount*
22 *of Fund financing for a State-selected response action at a facility*
23 *listed on the National Priorities List shall —*

24
25 *(1) take into account the number and financial viability of*
26 *parties identified as potentially liable for response costs at such*
27 *facility, and*

28
29 *(2) be limited to the amount necessary to achieve a level of*
30 *response that is not more stringent than that required under this*
31 *Act.*

32
33 *A State also may obtain Fund financing to develop and enhance its*
34 *capacity to undertake response actions and enforcement activities.*
35 *The Administrator shall establish specific criteria for allocating*
36 *expenditures from the Fund among States for the purposes of*
37 *undertaking response actions and enforcement activities at referred*
38 *and State-authorized facilities, and building state capacities to*
39 *undertake such response actions and enforcement activities. The*
40 *Administrator shall develop a program and provide an appropriate*
41 *level of Fund financing to assist Indian tribes in developing and*
42 *enhancing their capabilities to conduct response actions and*
43 *enforcement activities.*

1 (d) **STATE COST SHARE.** — As provided in section 104(c)(3)(B) of
2 this Act (as added by the Superfund Reform Act of 1994), a State
3 shall pay or assure payment of 15 percent of the costs of all response
4 actions and program support or other costs for which the State
5 receives funds from the Fund under this section. An Indian tribe
6 authorized to conduct a response actions and enforcement activities
7 or to which facilities have been referred under this section is not
8 subject to the cost-share requirement of this subsection.

9
10 (e) **TERMS AND CONDITIONS; COST RECOVERY.** — A contract
11 or agreement for a State authorization or referral under this section
12 is subject to such terms and conditions as the Administrator
13 prescribes. The terms and conditions shall include requirements for
14 periodic auditing and reporting of State expenditures from the Fund.
15 The contract or agreement may cover a specific facility, a category
16 of facilities, or all facilities listed or proposed to be listed on the
17 National Priorities List in the State. The contract or agreement shall
18 require the State to seek cost recovery, as contemplated by this Act,
19 of all expenditures from the Fund. Five percent of the monies
20 recovered by the State may be retained by the State for use in its
21 hazardous substance response program, and the remainder shall be
22 returned to the Fund. Before making further allocations from the
23 Fund to any State, the Administrator shall take into consideration the
24 effectiveness of the State's enforcement program and cost recovery
25 efforts.

26
27 (f) **ENFORCEMENT OF AGREEMENTS.** — If the Administrator
28 enters into a contract or agreement with a State pursuant to this
29 section, and the State fails to comply with any terms and conditions
30 of the contract or agreement, the Administrator, after providing
31 sixty days notice, may withdraw the State authorization or referral,
32 or seek in the appropriate federal district court to enforce the
33 contract or agreement to recover any funds advanced or any costs
34 incurred because of the breach of the contract or agreement by the
35 State.

36
37 (g) **MORE STRINGENT STATE STANDARDS.** — Under either an
38 authorization or referral, a State may select a response action that
39 achieves a level of cleanup that is more stringent than required under
40 section 121(d) of this Act if the State agrees to pay for the
41 incremental increase in response cost attributable to achieving the
42 more stringent cleanup level. Neither the Fund nor any party liable

1 *for response costs shall incur costs in excess of those necessary to*
2 *achieve a level of cleanup required under section 121(d) of this Act.*

3
4 **(h) OPPORTUNITY FOR PUBLIC COMMENT. —** *The*
5 *Administrator shall make available, for public review and comment,*
6 *applications for authorization under subsection (a) and applications*
7 *for referral under subsection (b). The Administrator shall not*
8 *approve or withdraw authorization or referral from a State unless the*
9 *Administrator notifies the State, and makes public, in writing, the*
10 *reasons for such approval or withdrawal.*

11
12 **(i) PERIODIC REVIEW OF AUTHORIZED STATE PROGRAMS**
13 **AND REFERRALS. —** *The Administrator shall conduct a periodic*
14 *review of authorized State programs and referrals to determine,*
15 *among other things, whether —*

16
17 *(1) the response actions were selected and conducted in a*
18 *manner that was substantially consistent with this Act, the*
19 *National Contingency Plan, and the contract or agreement*
20 *between the Administrator and the State;*

21
22 *(2) the State response costs financed by Fund expenditures were*
23 *incurred in the manner agreed to by the State, in accordance*
24 *with the contract or agreement between the Administrator and*
25 *the State; and*

26
27 *(3) the State's cost recovery efforts and other enforcement*
28 *efforts were conducted in accordance with the contract or*
29 *agreement between the Administrator and the State.*

30
31 *The Administrator, in consultation with the States, shall develop*
32 *specific criteria for periodic reviews of authorized State programs*
33 *and referrals. The Administrator shall establish a mechanism to*
34 *make the periodic State reviews available to the public.*

35
36 **(j) MODIFICATION OF RESPONSE. —** *At a facility for which a*
37 *State selects a response action under an authorization or a referral,*
38 *the State shall afford the opportunity for public participation in a*
39 *manner that is substantially consistent with the requirements of*
40 *section 117(f)-(i) of this Act, and shall give notice of and a copy of*
41 *the proposed plan for response action to the Administrator. The*
42 *State also shall give prompt written notice and a copy of the final*
43 *decision in selecting the response action to the Administrator.*

1 Within 90 days from the date of receipt of such notice and final
2 response action decision from the State, the Administrator may issue
3 a notice of a request to modify the State-selected remedy. The
4 Administrator's notice shall be in writing and shall set forth the basis
5 for the Administrator's position, and the final date for responding to
6 the Administrator's request, which shall be no less than 90 days from
7 the date of the notice. If the State's response does not resolve the
8 Administrator's concerns to the Administrator's satisfaction, the
9 Administrator may withhold the distribution of Fund monies for the
10 selected response action or may withdraw all or part of the State's
11 authorization or referral.²²

12
13 (l) **EFFECT OF SECTION.** — The President shall retain the
14 authority to take response actions at facilities listed or proposed for
15 listing on the National Priorities List that are not being addressed by
16 a State under an authorization or referral pursuant to this section.
17 At facilities listed or proposed for listing on the National Priorities
18 List that are being addressed by a State under either an authorization
19 or a referral, the President may take response actions that the
20 President determines necessary to protect human health or the
21 environment, if the State fails, after a request by the Administrator
22 to take such response actions in a timely manner. A State does not
23 have the authority, except pursuant to this section, to take or order a
24 response action, or any other action relating to releases or threatened
25 releases, at any facility listed or proposed for listing on the National
26 Priorities List. This section does not affect the authority of the
27 United States under this Act to seek cost recovery for costs incurred
28 by the United States. [See SRA §201(a) at page 23]

²²Section 201(a) of the Administration bill (pages 23-32) does not include a subsection (k) to the new CERCLA §127.

VOLUNTARY RESPONSE PROGRAM

SEC. 128.(a) IN GENERAL. — *The Administrator shall establish a program to provide technical and other assistance to the States to establish and expand voluntary response programs.*

(b) VOLUNTARY RESPONSE PROGRAM. — *The Administrator shall assist States to establish and administer a voluntary program that —*

(1) covers all eligible facilities, as defined in subsection (c) of this section, within the State;

(2) provides adequate opportunities for public participation, including prior notice and opportunity for comment, in selecting response actions;

(3) provides opportunities for technical assistance for voluntary response actions;

(4) has the capability, through enforcement or other mechanisms, of assuming the responsibility for completing a response action if the current owner or prospective purchaser fails or refuses to complete the necessary response, including operation and maintenance; and

(5) provides adequate oversight and has adequate enforcement authorities to ensure that voluntary response actions are completed in accordance with applicable Federal and State laws, including applicable permit requirements and any on-going operation and maintenance or long-term monitoring activities.

(c) ELIGIBLE FACILITIES. —

(1) Except as provided in paragraph 2 of this subsection, the term "eligible facility" means a facility or portion of a facility where there has been a release or threat of release of a hazardous substance, pollutant, or contaminant into the environment.

(2) The term "eligible facility" does not include any of the following —

1 (A) a facility at which a remedial investigation and
2 feasibility study is underway, unless the Administrator, in
3 consultation with the State, determines that it is
4 appropriate to allow the response action at such a facility
5 to proceed under a voluntary response program;

6
7 (B) a facility with respect to which a Record of Decision
8 has been issued under section 104 of this Act;

9
10 (C) a facility with respect to which a corrective action
11 permit condition or order has been proposed, issued,
12 modified, or amended to require implementation of
13 specific corrective measures under section 3004(u),
14 3004(v), or 3008(h) of the Solid Waste Disposal Act [42
15 U.S.C. 6924(u), 6924(v), or 6928(h)];

16
17 (D) a land disposal unit with respect to which a closure
18 notification under subtitle C of the Solid Waste Disposal
19 Act (42 U.S.C. 6921 et seq.) has been submitted;

20
21 (E) a facility with respect to which an administrative or
22 judicial order or decree concerning the response action has
23 been issued, sought, or entered into by the United States
24 under this Act, the Solid Waste Disposal Act (42 U.S.C.
25 6901 et seq.), the Atomic Energy Act of 1954 (42 U.S.C.
26 2011 et seq.), the Federal Water Pollution Control Act (33
27 U.S.C. 1251 et seq.), the Toxic Substances Control Act (15
28 U.S.C. 2601 et seq.) or title XIV of the Public Health
29 Service Act, commonly known as the Safe Drinking Water
30 Act (42 U.S.C. 300(f) et seq.); and

31
32 (F) a facility at which assistance for response activities
33 may be obtained under subtitle I of the Solid Waste
34 Disposal Act (42 U.S.C. 6991 et seq.) from the Leaking
35 Underground Storage Tank Trust Fund established under
36 section 9508 of the Internal Revenue Code of 1986;

37
38 (3) A facility listed or proposed for listing on the National
39 Priorities List may be an "eligible facility" if —

40
41 (A) the facility is not a facility identified in paragraph
42 (2);
43

1 (B) the State in which the facility is located has obtained a
2 State authorization or referral under section 127 of this
3 Act; and

4
5 (C) the Administrator concurs in the State's determination
6 to address the facility under its voluntary response
7 program.

8
9 (d) **ANNUAL REPORTING.** — The Administrator shall report, not
10 later than 1 year after enactment of this Act and annually thereafter,
11 to the Congress on the status of State voluntary response programs
12 including —

13
14 (1) whether the State's voluntary response program continues to
15 meet the criteria set forth in subsection (b) or (c);

16
17 (2) whether the State has adopted procedures to ensure that all
18 response actions completed or undertaken under the State's
19 voluntary response program comply with all applicable Federal
20 and State laws;

21
22 (3) whether public participation opportunities have been
23 adequate during the process of selecting a response action for
24 each voluntary response;

25
26 (4) whether voluntary response actions completed or undertaken
27 under the State voluntary response program have been
28 implemented in a manner that has reduced or eliminated risks to
29 human health and the environment to the satisfaction of the
30 State;

31
32 (5) whether voluntary response actions completed or undertaken
33 under the State voluntary response program at facilities listed
34 or proposed for listing on the National Priorities List were
35 conducted in accordance with section 121(d) of this Act; and

36
37 (6) whether a voluntary response action has increased risk to
38 human health or the environment, and whether a State has taken
39 timely and appropriate steps to reduce or eliminate that risk to
40 human health or the environment.
41

1 (i) **STATUTORY CONSTRUCTION.** — *This section is not*
2 *intended.* —

3
4 (1) *to impose any requirement on a State voluntary response*
5 *program existing on or after the date of enactment of this Act;*
6 *or*

7
8 (2) *to affect the liability of any person or response authorities*
9 *afforded under any law (including any regulation) relating to*
10 *environmental contamination, including this Act (except as*
11 *expressly provided in section 101(39)(D) (42 U.S.C.*
12 *9601(39)(D)), section 107(a)(5)(C) (42 U.S.C. 9607(a)(5)(C)),*
13 *the Solid Waste Disposal Act (42 U.S.C. 6901 et. seq.), the*
14 *Federal Water Pollution Control Act (33 U.S.C. 1251 et. seq.),*
15 *the Toxic Substances Control Act (15 U.S.C. 2601 et. seq.), or*
16 *title XIV of the Public Health Service Act, commonly known as*
17 *the "Safe Drinking Water Act" (42 U.S.C. 300(f) et. seq.). [See*
18 SRA §302 at page 37]

1 **SITE CHARACTERIZATION TECHNICAL ASSISTANCE PROGRAM**
2

3 **SEC. 129. (a) IN GENERAL.** — *The Administrator shall establish a*
4 *program to provide technical and other assistance to municipalities to*
5 *conduct site characterizations for facilities at which voluntary*
6 *response actions are being conducted or are proposed to be conducted*
7 *pursuant to a State voluntary response program that meets the*
8 *requirements described in section 127.*

9
10 **(b) TECHNICAL ASSISTANCE.** — *In carrying out the program*
11 *established under subsection (a), the Administrator may provide*
12 *technical and other assistance to a municipality to conduct a site*
13 *characterization of a facility within the jurisdiction of the*
14 *municipality at which voluntary response actions are being conducted*
15 *or are proposed to be conducted. A municipality requesting technical*
16 *and other assistance shall provide to the Administrator the following*
17 *information —*

18
19 *(1) describing the facility at which voluntary response actions*
20 *are being conducted or are proposed to be conducted;*

21
22 *(2) demonstrating the financial need of the owner or*
23 *prospective purchaser of such a facility for funds to conduct a*
24 *site characterization;*

25
26 *(3) analyzing the potential of the facility for creating new*
27 *businesses and employment opportunities on completion of the*
28 *response action;*

29
30 *(4) estimating the fair market value of the site after the*
31 *proposed or ongoing response action, if a response action is*
32 *necessary;*

33
34 *(5) regarding the economic viability and commercial activity on*
35 *real property —*

36
37 *(i) located within the immediate vicinity of the*
38 *affected site at the time of consideration of the*
39 *application; or*

40
41 *(ii) projected to be located within the immediate*
42 *vicinity of the affected site by the date that is 5 years*
43 *after the date of the consideration of the application;*

1 (6) *regarding the potential of the facility for creating new*
2 *businesses and employment opportunities on completion of a*
3 *response action;*

4
5 (7) *regarding whether the affected site is located in an*
6 *economically distressed community;*

7
8 (8) *regarding the presence of multiple sources of risk as*
9 *described in section 117(k) of this Act; and*

10
11 (9) *in such form, as the Administrator considers appropriate to*
12 *carry out the purposes of this section. [See SRA §303 at page 41]*

TITLE III — MISCELLANEOUS PROVISIONS

* * *

EFFECTIVE DATES, SAVINGS PROVISION

SEC. 302. (a) Unless otherwise provided, all provisions of this Act shall be effective on the date of enactment of this Act.

(b) Any regulation issued pursuant to any provisions of section 311 of the Clean Water Act which is repealed or superseded by this Act and which is in effect on the date immediately preceding the effective date of this Act shall be deemed to be a regulation issued pursuant to the authority of this Act and shall remain in full force and effect unless or until superseded by new regulations issued thereunder.

(c) Any regulation —

(1) respecting financial responsibility,

(2) issued pursuant to any provision of law repealed or superseded by this Act, and

(3) in effect on the date immediately preceding the effective date of this Act shall be deemed to be a regulation issued pursuant to the authority of this Act and shall remain in full force and effect unless or until superseded by new regulations issued thereunder.

(d) ~~[Nothing]~~ *Except as otherwise provided in this Act, nothing* in this Act shall affect or modify in any way the obligations or liabilities of any person under other Federal or State law, including common law, with respect to releases of hazardous substances or other pollutants or contaminants. The provisions of this Act shall not be considered, interpreted, or construed in any way as reflecting a determination, in part or whole, of policy regarding the inapplicability of strict liability, or strict liability doctrines, to activities relating to hazardous substances, pollutants, or contaminants or other such activities. [See SRA §201(b)(6) at page 32]

**TITLE VIII—ENVIRONMENTAL INSURANCE RESOLUTION
FUND**

SHORT TITLE

**SEC. 801. — This title may be cited as the "Environmental Insurance
Resolution and Equity Act of 1994". [See SRA §801 at page 112]**

ENVIRONMENTAL INSURANCE RESOLUTION FUND

SEC. 802. (a) ENVIRONMENTAL INSURANCE RESOLUTION FUND ESTABLISHED. — *There is hereby established the Environmental Insurance Resolution Fund (hereinafter referred to as the "Resolution Fund").*

(b) OFFICES. — *The principal office of the Resolution Fund shall be in the District of Columbia or at such other place as the Resolution Fund may from time to time prescribe.*

(c) STATUS OF RESOLUTION FUND. — *Except as expressly provided in this title, the Resolution Fund shall not be considered an agency or establishment of the United States. The members of the Board of Trustees shall not, by reason of such membership, be deemed to be officers or employees of the United States.*

(d) BOARD OF TRUSTEES. —

(1) IN GENERAL. — *The Resolution Fund shall be administered by a Board of Trustees (Board).*

(2) MEMBERSHIP. — *The Board shall consist of—*

(A) GOVERNMENTAL MEMBERS. —

(i) *The Administrator of the Environmental Protection Agency.*

(ii) *The Attorney General of the United States.*

(B) PUBLIC MEMBERS. — *Five public members appointed by the President not later than 60 days after the date of enactment of this title, not less than two of whom shall represent insurers subject section ____ of the Internal Revenue Code of 1986, and not less than two of whom shall represent eligible persons defined in subsection (g)(2)(A). The public members shall be citizens of the United States.*

(C) EX-OFFICIO MEMBER. — *The Secretary of the Treasury shall serve as an ex officio member of the Board.*

1 (3) **CHAIR.** — *The Chair of the Board shall be designated by*
2 *the President from time to time from among the members*
3 *described in paragraph (2)(A). No expenditure may be made,*
4 *or other action taken, by the Resolution Fund without the*
5 *concurrence of the Chair of the Board.*

6
7 (4) **COMPENSATION.** — *Governmental members of the Board*
8 *shall serve without additional compensation. Public members of*
9 *the Board shall, while attending meetings of the Board or while*
10 *engaged in duties related to such meetings or other activities of*
11 *the Board pursuant to this title, be entitled to receive*
12 *compensation at the rate of \$200 per day, including travel time.*
13 *While away from their homes or regular places of business,*
14 *members of the Board shall be allowed travel and actual,*
15 *reasonable and necessary expenses to the same extent as officers*
16 *of the United States.*

17
18 (5) **TERM OF PUBLIC MEMBERS.** — *Public members of the*
19 *Board shall serve for a term of 5 years, except that such*
20 *members may be removed by the President for any reason at*
21 *any time. A public member whose term has expired may con-*
22 *tinue to serve on the Board until such time as the President*
23 *appoints a successor. The President may reappoint a public*
24 *member of the Board, but no such member may consecutively*
25 *serve more than two terms.*

26
27 (6) **VACANCIES.** — *A vacancy on the Board shall be filled in*
28 *the same manner as the original appointment, except that such*
29 *appointment shall be for the balance of the unexpired term of*
30 *the vacant position.*

31
32 (7) **QUORUM.** — *Four members of the Board shall constitute a*
33 *quorum for the conduct of business.*

34
35 (8) **MEETINGS.** — *The Board shall meet not less than quarterly*
36 *at the call of the Chair. Meetings of the Board shall be open to*
37 *the public unless the Board, by a majority vote of members*
38 *present in open session, determines that it is necessary or*
39 *appropriate to close a meeting. The Chair shall provide at least*
40 *10 days notice of a meeting by publishing a notice in the*
41 *Federal Register and such notice shall indicate whether it is*
42 *expected that the Board will consider closing all or a portion of*
43 *the meeting. Nothing in this paragraph shall be construed to*

1 *apply to informal discussions or meetings among Board*
2 *members.*

3
4 **(e) OFFICERS AND EMPLOYEES. —**

5
6 **(1) CHIEF EXECUTIVE OFFICER; CHIEF FINANCIAL**
7 **OFFICER. —**

8
9 *(A) The Resolution Fund shall have a Chief Executive*
10 *Officer appointed by the Board who shall exercise any*
11 *authority of the Resolution Fund under such terms and*
12 *conditions as the Board may prescribe.*

13
14 *(B) The Resolution Fund shall have a Chief Financial*
15 *Officer appointed by the Board.*

16
17 **(2) COMPENSATION. —** *No officer or employee of the*
18 *Resolution Fund may be compensated by the Resolution Fund at*
19 *an annual rate of pay which exceeds the rate of basic pay in*
20 *effect from time to time for level I of the Executive Schedule*
21 *under section 5312 of title 5, United States Code. No officer or*
22 *employee of the Resolution Fund, other than a member of the*
23 *Board, may receive any salary or other compensation from any*
24 *source other than the Resolution Fund for services rendered*
25 *during the period of employment by the Resolution Fund.*

26
27 **(3) POLITICAL TEST OR QUALIFICATION. —** *No political*
28 *test or qualification shall be used in selecting, appointing,*
29 *promoting, or taking other personnel actions with respect to*
30 *officers, agents, and employees of the Resolution Fund.*

31
32 **(4) ASSISTANCE BY FEDERAL AGENCIES. —** *The Attorney*
33 *General, the Secretary of the Treasury, and the Administrator*
34 *of the Environmental Protection Agency, may to the extent*
35 *practicable and feasible, and in their sole discretion, make*
36 *personnel and other resources available to the Resolution Fund.*
37 *Such personnel and resources may be provided on a*
38 *reimbursable basis, and any personnel so provided shall not be*
39 *considered employees of the Resolution Fund for purposes of*
40 *paragraph (2).*

41
42 **(f) POWERS OF RESOLUTION FUND. —** *Notwithstanding any other*
43 *provision of law, except as provided in this title or as may be*

1 *hereafter enacted by the Congress expressly in limitation of the*
2 *provisions of this paragraph, the Resolution Fund shall have*
3 *power —*

4 *(1) to have succession until dissolved by Act of*
5 *Congress;*

6
7 *(2) to make and enforce such bylaws, rules and regulations as*
8 *may be necessary or appropriate to carry out the purposes of*
9 *this title;*

10
11 *(3) to make and perform contracts, agreements, and*
12 *commitments;*

13
14 *(4) to settle, adjust, and compromise, and with or without*
15 *consideration or benefit to the Resolution Fund release or waive*
16 *in whole or in part, in advance or otherwise, any claim,*
17 *demand, or right of, by, or against the Resolution Fund;*

18
19 *(5) to sue and be sued, complain and defend, in any State,*
20 *Federal or other court;*

21
22 *(6) to determine its necessary expenditures and the manner in*
23 *which the same shall be incurred, allowed, and paid, and*
24 *appoint, employ, and fix and provide for the duties,*
25 *compensation and benefits of officers, employees, attorneys, and*
26 *agents, all of whom shall serve at the pleasure of the Board;*

27
28 *(7) to invest funds, through the Secretary of the Treasury, in*
29 *interest bearing securities of the United States suitable to the*
30 *needs of the Resolution Fund; provided, that interest earned on*
31 *such investments shall be retained by the Resolution Fund and*
32 *used consistent with the purposes of this title;*

33
34 *(8) to hire or accept the voluntary services of consultants,*
35 *experts, advisory boards, and panels to aid the Resolution Fund*
36 *in carrying out the purposes of this title; and*

37
38 *(9) to take such other actions as may be necessary to carry out*
39 *the responsibilities of the Resolution Fund under this title.²³*

²³ In a February 3, 1994 cover letter submitting the Administration bill to Speaker of the House Thomas Foley, the EPA Administrator Carol M. Browner added the following language to §802(f)(9): "Nothing in this subsection or any other provision of this title shall be construed to permit the Resolution Fund to issue any evidence of indebtedness or otherwise borrow money."

1 **(g) RESOLUTION OF DISPUTES BETWEEN INSURED AND**
2 **INSURERS. —**
3

4 **(1) IN GENERAL. —** *The Resolution Fund shall offer a*
5 *comprehensive resolution described in this subsection with*
6 *respect to all eligible costs of an eligible person at eligible*
7 *sites.*
8

9 **(2) DEFINITIONS. —**
10

11 **(A) ELIGIBLE PERSON. —** *For purposes of this subsec-*
12 *tion, the term "eligible person" means any individual,*
13 *firm, corporation, association, partnership, consortium,*
14 *joint venture, commercial entity or governmental unit*
15 *(including any predecessor in interest or any subsidiary*
16 *thereof) that satisfies the following criteria:*
17

18 **(i) STATUS AS POTENTIALLY RESPONSIBLE**
19 **PARTY. —** *An eligible person —*
20

21 *(I) shall have been named at any time as a*
22 *potentially responsible party pursuant to the*
23 *Comprehensive Environmental Response,*
24 *Compensation and Liability Act with respect to*
25 *an eligible site on the National Priority List in*
26 *connection with a hazardous substance that was*
27 *disposed of on or before December 31, 1985; or*
28

29 *(II) is or was liable, or alleged to be liable, at*
30 *any time for removal (as defined in section*
31 *101(23) of the Comprehensive Environmental*
32 *Response, Compensation and Liability Act (42*
33 *U.S.C. 9601(23)) at any eligible site in connec-*
34 *tion with a hazardous substance that was*
35 *disposed of on or before December 31, 1985.*
36

37 **(ii) INSURANCE COVERAGE. —** *An eligible person*
38 *shall have demonstrated, to the satisfaction of the*
39 *Resolution Fund, that such person had entered into a*
40 *valid contract for comprehensive general liability*
41 *(including broad form liability, general liability,*
42 *commercial general liability, and excess or umbrella*
43 *coverage) or commercial multi-peril (including*

1 *broad form property, commercial package, special*
2 *multi-peril, and excess or umbrella coverage) insur-*
3 *ance coverage —*

4
5 *(I) for any seven years in any consecutive 14*
6 *year period prior to January 1, 1986; or*

7
8 *(II) in the case of a person that has been in*
9 *existence for less than 14 years prior to January*
10 *1, 1986, for at least one-half of such years of*
11 *existence.*

12
13 *For purposes of this clause, a valid contract for*
14 *insurance shall not include any contract for insurance*
15 *with respect to which a person has entered into a*
16 *settlement with an insurer providing, or where a*
17 *judgment has provided, that the contract has been*
18 *satisfied and that such person has no right to make*
19 *any further claims under such contract.*

20
21 **(B) ELIGIBLE COSTS. —**

22
23 *(i) IN GENERAL. — For purposes of this subsection,*
24 *the term "eligible costs" means costs described in*
25 *clause (ii) or (iii) incurred with respect to a hazard-*
26 *ous substance that was disposed of on or before De-*
27 *cember 31, 1985 —*

28
29 *(I) for which an eligible person has not been*
30 *reimbursed; or*

31
32 *(II) for which an eligible person has been*
33 *reimbursed and that are the subject of a dispute*
34 *between the eligible person and an insurer.*

35
36 *(ii) NPL SITES. — With respect to an eligible site*
37 *described in subparagraph (C)(i), eligible costs*
38 *means costs described in clause (i) —*

39
40 *(I) of response (as defined in section 101(25) of*
41 *the Comprehensive Environmental Response,*
42 *Compensation and Liability Act (42 U.S.C.*
43 *9601(25));*

1 (II) for natural resources damages; or

2
3 (III) to defend potential liability

4 (including, but not limited to, attorney's fees,
5 costs of suit, consultant and expert fees and
6 costs, and expenses for testing and monitoring).

7
8 (iii) **NON-NPL SITES.** — With respect to an eligible
9 site described in subparagraph (C)(ii), eligible costs
10 means costs described in clause (i) —

11 (I) of removal (as defined in section 101(23) of
12 the Comprehensive Environmental Response,
13 Compensation and Liability Act (42 U.S.C.
14 9601(23)); or

15
16 (II) to defend potential liability (including, but
17 not limited to, attorney's fees, costs of suit,
18 consultant and expert fees and costs, and
19 expenses for testing and monitoring).

20
21 (iv) **LIMIT ON ELIGIBLE COSTS.** —

22
23 (I) Except as provided in subclause (II), the
24 eligible costs of an eligible person may not
25 exceed —

26
27 (aa) \$15,000,000 in the case of an eligible
28 person that has demonstrated insurance
29 coverage pursuant to subparagraph
30 (A)(i)(I); or

31
32 (bb) an amount equal to one-seventh of
33 \$15,000,000 for each year of insurance
34 coverage, in the case of an eligible person
35 that has demonstrated insurance coverage
36 pursuant to subparagraph (A)(ii)(II).

37
38 (II) The limitation on eligible costs provided in
39 subclause (I) shall not apply to an eligible
40 person that, when filing a request for a
41 resolution offer with the Resolution Fund,
42 presents evidence to the satisfaction of the
43 Resolution Fund that the limits on valid

1 *contracts of insurance (including per occur-*
2 *rence, aggregate, primary, excess or other*
3 *limits) of such eligible person prior to January*
4 *1, 1986, cumulatively exceed the amount deter-*
5 *mined pursuant to subclause (I) without ref-*
6 *erence to any time period. For purposes of this*
7 *clause, a valid contract for insurance shall not*
8 *include any contract for insurance with respect*
9 *to which an eligible person has entered into a*
10 *settlement with an insurer providing, or where*
11 *a judgment has provided, that the contract has*
12 *been satisfied and that such eligible person has*
13 *no right to make any further claims under such*
14 *contract.*

15
16 **(C) ELIGIBLE SITE.** — *For purposes of this subsection,*
17 *the term "eligible site" means —*

18
19 *(i) any site or facility placed on the National Priority*
20 *List at any time, at which a hazardous substance was*
21 *disposed of on or before December 31, 1985; or*

22
23 *(ii) any site or facility subject to a removal (as*
24 *defined in section 101(23) of the Act (42 U.S.C.*
25 *9601(23)) conducted pursuant to such Act at any*
26 *time, at which a hazardous substance was disposed of*
27 *on or before December 31, 1985.*

28
29 *For purposes of this subparagraph, the term "facility"*
30 *shall have the same meaning as provided in section 101(9)*
31 *of the Comprehensive Environmental Response, Compensa-*
32 *tion and Liability Act (42 U.S.C. 9601(9)).*

33
34 **(D) STATE.** — *For purposes of this subsection, the term*
35 *"State" shall have the same meaning as provided in section*
36 *101(27) of the Comprehensive Environmental Response,*
37 *Compensation and Liability Act (42 U.S.C. 9601(27)).*

38
39 **(3) RESOLUTION OFFERS.** —

40
41 **(A) IN GENERAL.** — *The Resolution Fund shall offer one*
42 *comprehensive resolution to each eligible person. The*
43 *offer shall —*

1 (i) be for a percentage of all of the eligible costs of
2 such eligible person incurred in connection with all
3 eligible sites, determined pursuant to paragraph (4);
4 and

5
6 (ii) state the limitation on eligible costs, if any,
7 applicable to the eligible person pursuant to
8 paragraph (2)(B)(ii).
9

10 **(B) REQUESTS FOR RESOLUTION OFFERS. —** An
11 eligible person shall file a request for resolution from the
12 Resolution Fund in such form and manner as the
13 Resolution Fund shall prescribe. No such request shall be
14 deemed received by the Resolution Fund before the date
15 final regulations concerning State percentage categories
16 are published in the Federal Register pursuant to
17 paragraph 4(B)(iii). The Resolution Fund shall make an
18 offer of resolution, determined pursuant to paragraph (4),
19 to each eligible person that has filed a request for an offer
20 of resolution not later than 180 days after the receipt of a
21 complete request as determined by the Resolution Fund.
22

23 **(C) REVIEW OF RESOLUTION OFFERS. —** No resolu-
24 tion offer made by the Resolution Fund shall be subject to
25 review by any court.
26

27 **(4) DETERMINATION OF RESOLUTION OFFERS. —**
28

29 **(A) IN GENERAL. —** The Resolution Fund shall
30 determine a resolution offer —
31

32 (i) in the case of an eligible person that has
33 established only one State litigation venue pursuant to
34 subparagraph (C), by applying the State percentage
35 determined pursuant to subparagraph (B)(iii) to the
36 established State litigation venue;
37

38 (ii) in the case of an eligible person that has
39 established two or more State litigation venues
40 pursuant to subparagraph (C), each site with respect
41 to which a State litigation venue has been established
42 shall be accorded equal value and the applicable

percentage shall be the weighted average of all established State litigation venues; or

(iii) in the case of an eligible person that has not established any State litigation venue pursuant to subparagraph (C) —

(I) if the eligible person has potential liability in connection with only one hazardous waste site, by applying the State percentage determined pursuant to subparagraph (B)(iii) to the State in which the site is located; or

(II) if the eligible person has potential liability in connection with more than one hazardous waste site, each site shall be accorded equal value and the applicable percentage shall be the weighted average of all States in which the sites are located.

(B) STATE PERCENTAGE. —

(i) **IN GENERAL.** — The Congress finds that as of January 1, 1994, State law generally is more favorable to eligible persons that pursue claims concerning eligible costs against insurers in some States, that State law generally is more favorable to insurers with respect to such claims in some States, and that in some States the law generally favors neither insurers nor eligible persons with respect to such claims or that there is insufficient information to determine whether such law generally favors insurers or eligible persons with respect to such claims. The Congress further finds that considerations of equity and fairness require that resolution offers made by the Resolution Fund must vary to reflect the relative state of the law among the several States.

(ii) **PROPOSED REGULATIONS.** — The Resolution Fund shall examine the law in each State as of January 1, 1994. Not later than 120 days after the date of enactment of this title, the Resolution Fund shall publish in the Federal Register a notice of

1 *proposed rulemaking soliciting public comment for*
2 *60 days and classifying States into the following per-*
3 *centage categories:*

4
5 *(I) 20 percent, in the case of the ten States in*
6 *which the Resolution Fund determines that State*
7 *law generally is most favorable to insurers rela-*
8 *tive to the other States;*

9
10 *(II) 60 percent, in the case of the ten States in*
11 *which the Resolution Fund determines that State*
12 *law generally is most favorable to eligible*
13 *persons relative to the other States; and*

14
15 *(III) 40 percent, in the case of all other States.*

16
17 (iii) *FINAL REGULATIONS. —*

18
19 *(I) Not later than 60 days after the close of the*
20 *public comment period, the Resolution Fund*
21 *shall publish in the Federal Register final*
22 *regulations providing State classifications.*

23
24 *(II) The State classifications provided in the*
25 *final rule shall govern all resolution offers*
26 *made by the Resolution Fund and shall not be*
27 *subject to amendment by the Resolution Fund.*

28
29 *(III) Notwithstanding any other provision of*
30 *law, the final regulations promulgated by the*
31 *Resolution Fund pursuant to this clause shall not*
32 *be subject to review by any court.*

33
34 (C) *LITIGATION VENUE. — For purposes of this subsec-*
35 *tion, litigation venue is considered established with respect*
36 *to an eligible person if —*

37
38 *(i) on or before December 31, 1993, the eligible*
39 *person had pending in a court of competent juris-*
40 *isdiction a complaint or cross complaint against an*
41 *insurer with respect to eligible costs at an eligible*
42 *site; and*
43

1 (ii) *no motion to change venue with respect to such*
2 *complaint was pending on or before January 31,*
3 *1994.*

4
5 **(5) ACCEPTANCE OR REJECTION OF RESOLUTION**
6 **OFFER. —**

7
8 **(A) IN GENERAL. —**

9
10 (i) *An eligible person may, when submitting a*
11 *request for a resolution to the Resolution Fund, make*
12 *a written irrevocable election to accept any*
13 *resolution to be made by the Resolution Fund.*

14
15 (ii) *An eligible person that does not make an election*
16 *pursuant to clause (i) shall, within 60 days of the*
17 *receipt of a resolution offer from the Resolution*
18 *Fund, notify the Resolution Fund in writing of its*
19 *irrevocable acceptance or rejection of such offer.*
20 *An eligible person who does not so accept or reject a*
21 *resolution offer within 60 days shall be deemed to*
22 *have made an irrevocable election to reject the offer*
23 *and the provisions of subparagraph (C) shall apply.*

24
25 **(B) RESOLUTION OFFER ACCEPTED. —** *An eligible*
26 *person that accepts a resolution offered by the Resolution*
27 *Fund shall be subject to the provisions of this paragraph.*

28
29 (i) **WAIVER OF INSURANCE CLAIMS. —** *The*
30 *Resolution Fund shall not make payments to an*
31 *eligible person unless the eligible person agrees in*
32 *writing, subject to reinstatement described in clause*
33 (ii) —

34
35 (I) *to waive any existing and future claims*
36 *against any insurer for eligible costs; and*

37
38 (II) *to stay or dismiss each claim pending*
39 *against an insurer for eligible costs.*
40

1 (ii) **REINSTATEMENT OF INSURANCE**
2 **CLAIMS. —**

3
4 (I) *If the Resolution Fund fails to timely fulfill*
5 *its obligations to an eligible person under the*
6 *terms of an accepted resolution offer, such*
7 *eligible person shall be entitled to reinstate any*
8 *claim under a contract for insurance with re-*
9 *spect to eligible costs.*

10
11 (II) **STATUTE OF LIMITATION TOLLED. —**
12 *Notwithstanding any other provision of Federal*
13 *or State law, any Federal or State statute of*
14 *limitation concerning the filing or prosecution*
15 *of an action by an eligible person against an in-*
16 *surer, or by an insurer against an eligible*
17 *person, with respect to eligible costs shall be*
18 *tolled during the pendency of the stay of*
19 *pending litigation established by section 804(a).*

20
21 (iii) **PAYMENT OF RESOLUTION OFFERS. —**

22
23 (I) **PRE-RESOLUTION COSTS. —** *The*
24 *Resolution Fund shall make equal annual*
25 *payments over a period of eight years for eligi-*
26 *ble costs incurred by an eligible person on or*
27 *before the date such person accepts a resolution*
28 *offer pursuant to subparagraph (A)(i) or (ii),*
29 *and interest shall not accrue with respect to*
30 *such eligible costs. The Resolution Fund may,*
31 *in its sole discretion, make such payments over*
32 *a shorter period if the aggregate eligible costs*
33 *do not exceed \$50,000. An eligible person shall*
34 *submit to the Resolution Fund documentation of*
35 *such costs as the Resolution Fund may require.*
36 *The initial payment to an eligible person under*
37 *this subclause shall be made not later than 60*
38 *days after the receipt of documentation satisfac-*
39 *tory to the Resolution Fund.*

40
41 (II) **POST-RESOLUTION COSTS. —** *The*
42 *Resolution Fund shall make payments for*
43 *eligible costs incurred by an eligible person*

1 after the date such person accepts a resolution
2 offer pursuant to subparagraph (A)(i) or (ii) to
3 the eligible person, or to a contractor or other
4 person designated by the eligible person, subject
5 to such documentation as the Resolution Fund
6 may require. Payments under this subclause
7 shall be made not later than 60 days after the
8 receipt of documentation satisfactory to the
9 Resolution Fund.

10
11 **(III) ADJUSTMENT FOR DEDUCTIBLE OR**
12 **SELF INSURANCE.** — In the case of an eligi-
13 ble person that has submitted to the Resolution
14 Fund, as proof of status as an eligible person, a
15 contract for insurance described in paragraph
16 (2)(A)(ii) that is subject to a self-insured
17 retention or a deductible, payment to such eligi-
18 ble person pursuant to a resolution shall be re-
19 duced by the amount of such self-insured
20 retention or deductible, except that such reduc-
21 tion shall not exceed the amount of one self-in-
22 sured retention or one deductible that the
23 eligible person would have been required to pay
24 with respect to one claim for eligible costs
25 under the terms of the contracts for insurance
26 submitted. In the event that the eligible person
27 submitted more than one contract for insurance,
28 any such reduction shall be made with respect to
29 the lowest of the amounts of self-insured
30 retentions and deductibles.

31
32 **(IV) ADJUSTMENT FOR CERTAIN DUTY-TO-**
33 **DEFEND COSTS.** — If an insurer has incurred
34 and paid costs pursuant to a duty-to-defend
35 clause contained in a contract for insurance
36 described in paragraph (2)(B), and such costs
37 are the subject of a dispute between the eligible
38 person and an insurer, the payment of a
39 resolution to an eligible person shall be reduced
40 by such amount, and the Resolution Fund shall
41 pay such amount to the insurer. If such costs
42 were paid by the insurer on or before the date
43 the eligible person accepted a resolution offer

1 *made by the Resolution Fund, payment to an*
2 *insurer under this subclause shall be made in*
3 *equal annual installments over a period of eight*
4 *years, and interest shall not accrue with respect*
5 *to such costs. The Resolution Fund may, in its*
6 *sole discretion, make such payments over a*
7 *shorter period if the aggregate costs do not*
8 *exceed \$50,000.*

9
10 **(C) RESOLUTION OFFER REJECTED; LITIGATION OF**
11 **INSURANCE CLAIMS. —**
12

13 **(i) ADMISSIBILITY OF RESOLUTION OFFER. —**

14 *No resolution offered by the Resolution Fund shall be*
15 *admissible in any legal action brought by an eligible*
16 *person against an insurer or by an insurer against an*
17 *eligible person.*
18

19 **(ii) INSURER ACTION AGAINST ELIGIBLE**

20 **PERSON. —** *Any eligible person that rejects a reso-*
21 *lution offer, litigates a claim with respect to eligible*
22 *costs against an insurer, and obtains a final judgment*
23 *that is less favorable than the resolution offered by*
24 *the Resolution Fund, shall be liable to such insurer*
25 *for 20 percent of the reasonable costs and legal fees*
26 *incurred by the insurer in connection with such*
27 *litigation after the resolution was offered to the*
28 *eligible person. The district courts of the United*
29 *States shall have original jurisdiction of all such ac-*
30 *tions, without regard to amount or value. The court*
31 *shall reduce any award to an insurer in any such*
32 *action by the amount, if any, of such costs and legal*
33 *fees recovered by the insurer pursuant to State law*
34 *or court rule. Nothing in this clause shall be con-*
35 *strued to limit or affect in any way the application of*
36 *State law, or the rule of any court, to such costs or*
37 *legal fees.*
38

39 **(iii) REIMBURSEMENT TO INSURER. —** *In the*
40 *case of an eligible person that rejects a resolution*
41 *offer, litigates a claim with respect to eligible costs*
42 *against one or more insurers, and obtains a final*

1 judgment against any such insurer, the Resolution
2 Fund —

3
4 (I) shall reimburse to such insurer or insurers
5 the lesser of the amount of the resolution offer
6 made to the eligible person or the final
7 judgment; and

8
9 (II) may, if the resolution offer exceeded the
10 final judgment, reimburse the insurer or
11 insurers for unrecovered reasonable costs and
12 legal fees, except that the total reimbursement
13 under this subclause may not exceed the amount
14 of the resolution offer to the eligible person.

15
16 Reimbursements pursuant to this clause shall be
17 subject to such documentation as the Resolution Fund
18 may require and shall be made by the Resolution Fund
19 not later than 60 days after receipt by the Resolution
20 Fund of a complete request for reimbursement as
21 determined by the Resolution Fund.

22
23 (6) PAYMENTS CONSIDERED PURSUANT TO INSURANCE
24 CONTRACT. — Payments made by the Resolution Fund
25 pursuant to a resolution offer shall be deemed payments made
26 by an insurer under the terms and conditions of a contract of
27 insurance or in settlement thereof. Nothing in this paragraph
28 shall be construed to affect in any way the issue of whether the
29 liability limits of a contract of insurance has been satisfied.

30
31 (7) RESOLUTION PROCESS NOT ADMISSION OF
32 LIABILITY. — No provision of this title, and no action by an
33 eligible person undertaken in connection with any provision of
34 this title shall in any way constitute an admission of liability in
35 connection with the disposal of a hazardous substance.

36
37 (8) REGULATIONS. —

38
39 (A) PROCEDURES AND DOCUMENTATION. — Not
40 later than 120 days after the date of enactment of this title,
41 the Resolution Fund shall publish in the Federal Register
42 for public comment of not more than 60 days interim final
43 regulations concerning procedures and documentation for

1 *the submission of requests for resolution offers and the*
2 *payment of accepted resolution offers. Not later than 60*
3 *days after the close of the public comment period, the*
4 *Resolution Fund shall publish in the Federal Register final*
5 *regulations concerning such procedures and documenta-*
6 *tion, which may be amended by the Resolution Fund from*
7 *time to time.*

8
9 **(B) OTHER REGULATIONS.** — *The Resolution Fund may*
10 *prescribe such other regulations, rules and procedures as*
11 *the Resolution Fund deems appropriate from time to time.*

12
13 **(C) JUDICIAL REVIEW.** — *No regulation, rule or*
14 *procedure prescribed by the Resolution Fund pursuant to*
15 *this paragraph shall be subject to review by any court*
16 *except to the extent such regulation, rule or procedure is*
17 *not consistent with a provision of this title.*

18
19 **(h) JURISDICTION OF FEDERAL COURTS.** — *Notwithstanding*
20 *section 1349 of title 28, United States Code:*

21
22 **(1)** *The Resolution Fund shall be deemed to be an agency of the*
23 *United States for purposes of sections 1345 and 1442 of title 28,*
24 *United States Code.*

25
26 **(2)** *All civil actions to which the Resolution Fund is a party*
27 *shall be deemed to arise under the laws of the United States, and*
28 *the district courts of the United States shall have original*
29 *jurisdiction of all such actions, without regard to amount or*
30 *value.*

31
32 **(3)** *Any civil or other action, case or controversy in a court of*
33 *a State, or in any court other than a district court of the United*
34 *States, to which the Resolution Fund is a party may at any time*
35 *before the trial thereof be removed by the Resolution Fund,*
36 *without the giving of any bond or security, to the district court*
37 *of the United States for the district and division embracing the*
38 *place where the same is pending, or, if there is no such district*
39 *court, to the district court of the United States for the district*
40 *in which the principal office of the Resolution Fund is located,*
41 *by following any procedure for removal of causes in effect at*
42 *the time of such removal.*
43

1 (4) *No attachment or execution shall be issued against the*
2 *Resolution Fund or any of its property before final judgment in*
3 *any State, Federal, or other court.*

4
5 (i) **REPORTS. —**

6
7 (1) **ANNUAL REPORTS. —** *The Resolution Fund shall report*
8 *annually to the President and the Congress not later than*
9 *January 15 of each year on its activities for the prior fiscal*
10 *year. The report shall include —*

11
12 (A) *a financial statement audited by an independent audi-*
13 *tor; and*

14
15 (B) *a determination of whether the fees and assessments*
16 *imposed by section ____ of the Internal Revenue Code of*
17 *1986 will be sufficient to meet the anticipated obligations*
18 *of the Resolution Fund.*

19
20 (2) **SPECIAL REPORTS. —** *The Resolution Fund shall promptly*
21 *report to the President and the Congress at any time the*
22 *Resolution Fund determines that the fees and assessments*
23 *imposed by section ____ of the Internal Revenue Code of 1986*
24 *will be insufficient to meet the anticipated obligations of the*
25 *Resolution Fund.*

26
27 (j) **FALSE OR FRAUDULENT STATEMENTS OR CLAIMS. —**

28
29 (1) **CRIMINAL PENALTIES. —**

30
31 (A) *For purposes of section 287 of title 18, United States*
32 *Code (relating to false claims), the Resolution Fund shall*
33 *be considered an agency of the United States and any*
34 *officer or employee of the Resolution Fund shall be*
35 *considered a person in the civil service of the United*
36 *States.*

37
38 (B) *For purposes of section 1001 of title 18, United States*
39 *Code (relating to false statements or entries), the*
40 *Resolution Fund shall be considered an agency of the*
41 *United States.*
42

1 (b) "false information" means officers and employees of the
2 "Department" and of the "State" and officers and employees of
3 "the United States" for purposes of section 302 of this Act,
4 of the "false Code" (relating to false claims). (See GFA 8802 at
5 8802-1)

**FINANCIAL STATEMENTS, AUDITS,
INVESTIGATIONS AND INSPECTIONS**

SEC. 803. (a) IN GENERAL. — *The financial statements of the Resolution Fund shall be prepared in accordance with generally accepted accounting principles and shall be audited annually by an independent certified public accountant in accordance with the auditing standards issued by the Comptroller General. Such auditing standards shall be consistent with the private sector's generally accepted auditing standards.*

(b) INVESTIGATIONS AND OTHER AUDITS. — *The Inspector General of the Environmental Protection Agency is authorized to conduct such audits and investigations as the Inspector General deems necessary or appropriate. For purposes of the preceding sentence, the provisions of the Inspector General Act of 1978 shall apply to the Resolution Fund and to the Inspector General to the same extent as they apply to the Environmental Protection Agency. [See SRA §803 at page 134]*

STAY OF PENDING LITIGATION

SEC. 804. (a) IN GENERAL. —

(1) Except as provided in this section, enactment of this title operates as a stay, applicable to all persons other than the United States, of the commencement or continuation, including the issuance or employment of process or service of any pleading, motion, or notice, of any judicial, administrative, or other action with respect to claims for indemnity or other claims arising from a contract for insurance described in section 802(g)(2)(A)(ii) concerning insurance coverage for eligible costs as defined in section 802(g)(2)(B)(i).

(2) Nothing in paragraph (1) shall be construed to apply to the extent the issuance or employment of process or service of any pleading, motion, or notice, of any judicial, administrative, or other action with respect to claims for indemnity or other claims does not concern eligible costs (as defined in section 802(g)(2)(B)(i)) or a contract for insurance described in section 802(g)(2)(A)(ii). An eligible person (as defined in section 802(g)(2)(A)) may move to sever claims not involving eligible costs from claims involving eligible costs and may proceed with the prosecution of claims not involving eligible costs.

(b) TERMINATION OF STAY. —

(1) PENDING OFFER OF RESOLUTION. — The stay established by subsection (a) shall terminate with respect to an eligible person upon the earlier of —

(A) the rejection of a resolution offer by such eligible person pursuant to section 802(g)(5)(A); or

(B) the failure of the Resolution Fund to timely fulfill the terms of a resolution offer accepted by such eligible person.

(2) EXPIRATION OF RESOLUTION OFFERS. — No stay established by subsection (a) shall be effective after May 31, 2000.

1 (c) *OTHER STAYS.* — *Nothing in this section shall be construed to*
2 *limit or affect in any way the discretion of any judicial,*
3 *administrative, or other entity to maintain or impose a stay that is*
4 *not required by subsection (a) but that will otherwise serve the ends*
5 *of justice by staying a judicial, administrative or other action*
6 *pending the acceptance or rejection of a resolution offer pursuant to*
7 *section 802(g)(5)(A).*

8
9 (d) *AUTHORITY OF UNITED STATES UNAFFECTED.* — *Nothing*
10 *in this section shall be construed to limit or affect in any way the*
11 *discretion or authority of the United States or any party to commence*
12 *or continue an allocation process, cost recovery, or other action*
13 *pursuant to the authority of sections 101-122a of the Comprehensive*
14 *Environmental Response, Compensation and Liability Act (42 U.S.C.*
15 *9601-9622a).* [See SRA §804 at page 135]

SUNSET PROVISIONS

1
2
3 **SEC. 805. (a) AUTHORITY TO ACCEPT REQUESTS FOR RESOLU-**
4 **TION. — The authority of the Resolution Fund to accept requests for**
5 **resolution shall terminate after September 30, 1999.**

6
7 **(b) AUTHORITY TO OFFER RESOLUTIONS. — The authority of**
8 **the Resolution Fund to offer resolutions to eligible persons shall**
9 **terminate after March 31, 2000.**

10
11 **(c) CONTINUING OBLIGATIONS. — Nothing in this section shall**
12 **be construed to limit or affect in any way the authority of the**
13 **Resolution Fund —**

14
15 **(1) to make payments pursuant to resolution offers made on or**
16 **before March 31, 2000; or**

17
18 **(2) to reimburse insurers with respect to litigation commenced**
19 **or continued in connection with a resolution offer made on or**
20 **before March 31, 2000, that was rejected by an eligible person**
21 **or not acted upon by an eligible person as provided in section**
22 **802(g)(5)(A). [See SRA §805 at page 137]**

SOVEREIGN IMMUNITY OF THE UNITED STATES

SEC. 806. No obligation or liability of the Resolution Fund shall constitute an obligation or liability of the United States, or of any department, agency, instrumentality, officer, or employee thereof. No person shall have a cause of action of any kind against the United States, or any department, agency, instrumentality, officer, or employee thereof with respect to any obligation, liability, or activity of the Resolution Fund. [See SRA §806 at page 137]

EFFECTIVE DATE

SEC. 807. The provisions of this title shall become effective on the date of enactment of this title. [See SRA §806 at page 138]